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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 In re:

4 PLATINUM-BEECHWOOD LITIGATION 18 Civ. 06658 (JSR)

5 -----x

6 MARTIN TROTT and CHRISTOPHER 18 Civ. 10936 (JSR)
7 SMITH, as Joint Official
Liquidators and Foreign
Representatives of PLATINUM
8 PARTNERS VALUE ARBITRAGE FUND LP
(in Official Liquidation) and
9 PLATINUM PARTNERS VALUE ARBITRAGE
FUND LP (in Official Liquidation)

10 Plaintiffs,

11 v.

12 PLATINUM MANAGEMENT (NY) LLC,
13 et al.,

14 Defendants.

15 -----x Trial

17 New York, N.Y.

18 November 30, 2022
19 9:50 a.m.

20 Before:

21 HON. JED S. RAKOFF,

22 District Judge
23 and a Jury

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1 APPEARANCES

2 HOLLAND & KNIGHT, LLP
3 Attorneys for Plaintiffs
BY: WARREN E. GLUCK
4 MARTIN L. SEIDEL
RICHARD A. BIXTER JR.
5 QIAN (SHEILA) SHEN
NOAH W.S. PARSON
6 ELLIOT A. MAGRUDER

7 CURTIS, MALLET-PREVOST, COLT & MOSLE, LLP
8 Attorneys for Defendant Bodner
BY: ELIOT LAUER
9 GABRIEL HERTZBERG
JULIA B. MOSSE
10 NATHANIEL C. AMENT-STONE
ALLESANDRA TYLER

11
12 Also Present:

14 Michael Robson, Technician
15 Paradochs Motion Support

16 Esterah Brown, Paralegal
Curtis Mallet-Prevost, Colt & Mosle LLP

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1 (In open court; jury not present)

2 THE DEPUTY CLERK: Will the parties please draw a
3 microphone close to them and identify themselves for the
4 record.

5 MR. GLUCK: Good morning, your Honor. Warren Gluck of
6 the law firm Holland & Knight, representing Platinum Partners
7 Value Arbitrage Fund LLP—PPVA—as well as the Joint Official
8 Liquidator Martin Trott, who sits next to me. To his right is
9 Richard Bixter, also a partner at Holland & Knight; Sheila
10 Shen, an associate at Holland & Knight; Noah Parson, an
11 associate at Holland & Knight; and Elliot Magruder, an
12 associate at Holland & Knight, all representing both
13 plaintiffs—PPVA and Martin Trott.

14 THE COURT: Good morning.

15 MR. LAUER: Good morning, your Honor. Eliot Lauer, of
16 Curtis, Mallet-Prevost, Colt & Mosle, for the defendant, David
17 Bodner.

18 I would like to say that tomorrow I will be switching
19 firms and will be with the Katten firm, and we have taken care
20 of that in terms of all of the necessary filings.

21 With me is my partner Gabriel Hertzberg, who is also
22 going to Katten; Mr. David Bodner; my partner Julia Mosse, who
23 is also joining me at Katten.

24 THE COURT: Is there going to be anyone left at Curtis
25 Mallet?

Mbu2Pla1

1 MR. LAUER: And to her right is Mike Robson, who is a
2 technical person assisting us with graphics and the like; and
3 to his right is my colleague Nathaniel Ament-Stone, who is an
4 associate at Curtis Mallet; and to my rear is Alexandra Tyler
5 and Esterah Brown.

6 THE COURT: Good morning. All right. So --

7 MR. GLUCK: Your Honor, one moment. I neglected to
8 mention Martin Seidel, a partner at Holland & Knight, was
9 stricken ill. He is on the telephone.

10 THE COURT: Yes, and I agreed to allow him to listen
11 in by telephone, but let me advise him that if at some point he
12 can't hear something, do not interrupt. We will proceed
13 without any interruption. All right?

14 So there are a number of motions *in limine*, and they
15 are adjudicated as follows:

16 First, there is defendant's motion to exclude proof of
17 pre-2013 incentive fee payments and preclude reference to
18 withdrawal of incentive fees after 2014. The first portion of
19 that motion is denied; the second portion is granted.
20 Specifically, plaintiffs are permitted to present evidence
21 related to the \$18.53 million in incentive fee payments that
22 were allegedly paid out to Platinum Management Partners in
23 2013. However, plaintiffs cannot make any reference to cash
24 withdrawal of incentive fees by Mr. Bodner following September
25 2014, though this does not restrict plaintiffs from providing

Mbu2Pla1

1 evidence as to noncash interests Mr. Bodner allegedly redeemed
2 thereafter.

3 Defendant's second motion *in limine* is to consolidate
4 certain allegedly duplicative claims, and I think the jury will
5 be presented with just one claim for breach of fiduciary duty
6 and one claim for fraud, and I really don't see the aiding and
7 abetting claim on these facts remaining.

8 With respect to defendant's third motion *in limine*,
9 excluding references at trial to punitive damages and from the
10 jury instructions, I am not sure yet that this motion is ripe,
11 so I will preclude any mention of it on opening statements, but
12 I will resolve the question of whether there is an issue of
13 punitive damages to go to the jury at a later stage of this
14 trial.

15 MR. LAUER: Your Honor --

16 THE COURT: No. I'm giving my rulings and I don't
17 want to be interrupted.

18 MR. LAUER: Sorry.

19 THE COURT: I was incredibly taken aback by some of
20 the last-minute applications in this case, particularly from
21 defense counsel, for example, an application to have service
22 electronically for two witnesses. This trial has been set for
23 months. If there was a problem with service, it should have
24 been resolved long ago. That application is denied.

25 Now, to continue.

Mbu2Pla1

1 The defendant's fourth motion *in limine* is to preclude
2 argument or evidence in support of the plaintiffs' theories for
3 disgorgement and consequential damages. I am leaning towards
4 granting that, but I will hear some argument on it later this
5 morning.

6 Then there is the defendant's fifth motion *in limine*
7 to exclude evidence relating to Mr. Bodner's criminal history
8 and dealings with the SEC and FTC and to exclude matters
9 already adjudicated on summary judgment. The first part of
10 that motion is granted. As to the second part, the evidence
11 concerning the creation and capitalization of Beechwood and the
12 BEOF funds and the Black Elk scheme and the Montsant
13 transactions and the Agera sale and the overvaluation of Over
14 Everything and China Horizon, that evidence may be presented so
15 long as it is limited to Mr. Bodner's role in the overvaluation
16 that's alleged to have resulted.

17 With respect to plaintiffs' first motion *in limine*,
18 which is to exclude evidence or argument relating to the March
19 2016 release agreement, that motion is denied.

20 With respect to plaintiffs' second motion *in limine*
21 seeking rulings that, first, the criminal convictions of PMNY
22 and PPVA executives—namely, Nordlicht, Levy, and Small—serve
23 as collateral estoppel and, second, that adverse inferences
24 should be made against Bodner as a result of Nordlicht's
25 invocation of the Fifth Amendment, that motion is denied.

Mbu2Pla1

With respect to plaintiffs' third motion *in limine* seeking a ruling that all knowledge obtained by Curtis Mallet in representation of PMNY and Bodner be imputed to Bodner, that motion is denied with the qualification that any knowledge that was obtained by Curtis Mallet during its representation of Mr. Bodner personally in this proceeding may be imputed to the defendant.

Now, there was something you, counsel, wanted to raise.

MR. LAUER: I apologize, your Honor. I was not calling to address the motions. We had ordered -- I have a hearing impairment. We had ordered the Livenote and it didn't work, and I was raising -- standing simply to ask if I could put this near the Court so I can hear you until the Livenote goes back on.

THE COURT: Yes. Now, my wife would argue that you don't need to hear me and probably don't want to hear me, but that's her view. Yes, that's fine, and my apologies for being a little grouchy, but it will only get worse as time goes by.

MR. LAUER: Would it be okay if I put this up here?

THE COURT: Yes.

MR. LAUER: And I think once Livenote goes on, I won't need it.

Thank you.

THE COURT: Thanks a lot.

Mbu2Pla1

1 Next, we will pick a jury of nine people. Each side
2 will have --

3 MR. HERTZBERG: Your Honor, Gabriel Hertzberg. I'm
4 sorry to interrupt.

5 In your remarks, when Mr. Lauer stood up about his
6 hearing problem, the Court denied the motions for alternative
7 service.

8 THE COURT: Yes.

9 MR. HERTZBERG: And I just wanted the Court to know
10 that we did e-mail the motion, as directed, into chambers a
11 month ago, on November 2, and there was some kind of a mixup
12 within chambers, and so the law clerk asked for them again this
13 morning.

14 THE COURT: I see.

15 MR. HERTZBERG: But if your Honor knows all of that, I
16 apologize. I just wanted to make sure you were aware.

17 THE COURT: No, I wasn't aware. That's a relevant
18 point. But I guess my question still is -- well, all right.
19 We will revisit that in a minute.

20 MR. HERTZBERG: And then one more point of
21 clarification. There is one motion for alternative service
22 from us and one for the plaintiffs.

23 THE COURT: And when was the plaintiffs' motion made.

24 MR. GLUCK: The plaintiffs' motion concerns Mr. Seth
25 Gerszberg.

Mbu2Pla1

1 THE COURT: No. When was it made?

2 MR. GLUCK: Oh, that motion was made a few weeks ago.

3 It was the same situation with e-mail to chambers.

4 THE COURT: I apologize to counsel because I thought
5 it was just made. I first learned about it this morning, and I
6 thought it was grossly untimely as a result, but now I
7 understand that it was only modestly untimely. So we will hear
8 more about that later, then.

9 So each side will have three peremptory challenges.
10 We do this in rounds. So my courtroom deputy, after we have
11 seated the nine jurors and I have questioned them for cause and
12 excuse any who need to be excused for cause and replace them,
13 will then hand a little board with cards to counsel, and you
14 will turn over the card that you want to exercise your
15 challenge for that round. And it will be one for plaintiff,
16 one for defendant each round. If you waive your challenge on a
17 given round, you still preserve your challenges for the
18 subsequent rounds unless both sides waive on a round, in which
19 case we have a jury.

20 How long does plaintiffs' counsel want for opening
21 statement?

22 MR. GLUCK: We have about 90 minutes, your Honor.

23 THE COURT: How much?

24 MR. GLUCK: Nine zero, 90 minutes.

25 THE COURT: No. No. I should have made this clear.

Mbu2Pla1

I never allow opening statements of more than 30 minutes, and the reason for that is because this is the first time the jury is hearing about the case, and they are not going to be able to follow all of the nuances that you, as counsel, having embedded yourself in this case for so long, take as obvious but will be very strange to them. So 30 minutes for each side.

Okay. Let's see what else.

Oh, yes. Plaintiffs' counsel indicated that they thought the case would last about ten days or so, which seems to me about right. Defense counsel thought it might last as much as 17 days, which I think is not going to happen. And then defense counsel, in an exercise of *chutzpah*, said they wanted Fridays off. I am going to grant you Fridays off for religious reasons, but I am not going to grant you 17 days of trial. Forget about it.

So here is how that will operate. Every time a defense counsel is about to address a witness either on cross-examination of the plaintiffs' witnesses or on direct examination of their own witnesses, they will provide me at the sidebar with a statement of how long they are going to be and I will hold them to that. If, as we move along, it seems to me that those times are excessive, I will cut them down. I don't like to do that. I have very rarely had to do that. But when I saw 17 days, it gave me a great deal of pause. This is not that complicated a case.

Mbu2Pla1

1 Let's see. Linda, when is the jury panel available?

2 THE DEPUTY CLERK: I should be able to call them now.

3 THE COURT: Why don't you call?

4 THE DEPUTY CLERK: I shall.

5 MR. LAUER: Just a point of clarification, what we
6 asked on Friday was to end at 1:00.

7 THE COURT: Yes, that's what I understood, and that's
8 granted. And since I am feeling sure that you -- both sides
9 will only take about six days to try this case, that will be an
10 easy accommodation.

11 Okay. Now, let me just hear, and then we will break
12 for a minute until the jury arrives -- and there is one person
13 who is seated in the back, when the jury rises you will need to
14 go to the back row because they need to occupy those seats.
15 Thank you.

16 So tell me the story—we will start with plaintiffs'
17 counsel and then defense counsel—on these people that you
18 haven't been able to serve that you want.

19 MR. GLUCK: I am also developing a hearing problem
20 myself.

21 (Counsel confer)

22 MR. GLUCK: There is one witness in this case --

23 THE COURT: You don't have to stand, but bring the
24 microphone up to you so the court reporter can hear you.

25 MR. GLUCK: There is one witness in this case Mr. Seth

Mbu2Pla1

1 Gerszberg. Mr. Seth Gerszberg was the principal of Over
2 Everything. We intend to provide evidence through him that
3 Over Everything was a defunct entity by the time of 2016.
4 Secondly, Mr. Gerszberg, along with others, delivered a
5 presentation to Mr. Bodner and Mr. --

6 THE COURT: Well, I'm not interested in -- I'm
7 assuming both sides have a good-faith reasoning for calling
8 these respective witnesses. I just want to know why you
9 weren't able to serve them.

10 MR. GLUCK: We have had a process server outside his
11 house for a period of time, weeks. At no point did he appear
12 to come home, and we believe that he has been avoiding service
13 of the trial subpoena in this case. We have reached out to his
14 counsel. We have sent e-mails to all of the e-mail address
15 that is we could find. The Court will recall he was a
16 defendant in the case.

17 THE COURT: Who is his counsel.

18 MR. GLUCK: His counsel.

19 MR. BIXTER: Elliot Ostrove. He was also the counsel
20 who negotiated this settlement. Mr. Ostrove was requested to
21 accept service on behalf of his client. He asked his client,
22 and evidently that request was not granted. As a result, we
23 sent a process server to literally sit outside his house until
24 he could be served.

25 THE COURT: What is Mr. Ostrove's phone number?

Mbu2Pla1

1 MR. GLUCK: Mr. Magruder will have that information.
2 Just hold on.

3 THE COURT: I'm sorry?
4 MR. GLUCK: Mr. Magruder will have the phone number.
5 I should probably, too.

6 I have a cell phone telephone number. So this is his
7 e-mail address. It is eostrove@EpsteinOstrove.com. This is --

8 THE COURT: No. I want the cell phone number.
9 MR. GLUCK: Cell phone number is 732-485-6241. He's
10 got an office line as well, which is also 732 --

11 THE DEPUTY CLERK: Stop.
12 THE COURT: Just what's the name of the witness again?
13 MR. GLUCK: The name of the witness is Seth Gerszberg.
14 THE COURT: Oh, yes.

15 (Pause)
16 THE COURT: What's the other number?
17 MR. GLUCK: Office line is 732-820-7761.
18 (Phone call with Court and Mr. Ostrove)
19 THE COURT: The jury panel is here. We will deal with
20 the other witness in similar fashion in due course.
21 (Continued on next page)

MBUCpla2

Opening - Mr. Gluck

1 THE COURT: Ladies and gentlemen, we're about to hear
2 opening statements from counsel. I want to advise you that of
3 course nothing that counsel says is evidence, the evidence will
4 come from the witnesses and the exhibits. Because the evidence
5 will come in one little bit at a time, it may be very helpful
6 to you to hear what each side thinks the evidence will show or
7 fail to show as the case may be.

8 The plaintiff, who will give the opening statement
9 first, bears what we call the burden of proof. That is to say
10 that they have to show that it's more likely than not that the
11 claims they have made are proven, and I'll tell you a lot more
12 about that with my jury instructions later on, but because they
13 have the burden of proof, they'll go first.

14 So we'll hear from plaintiffs' counsel.

15 MR. GLUCK: Good morning, and thank you for serving.

16 My name is Warren Gluck and I'm an attorney at Holland &
17 Knight. I represent Platinum Partners Value Arbitrage Fund.
18 It was a hedge fund. This case is about hedge fund managers,
19 both the company that managed this hedge fund and individuals
20 sitting right there, a human hedge fund manager who was one of
21 the two senior partners at the management company that managed
22 the hedge fund, PPVA, called Platinum Partners Value Arbitrage
23 Funds, we're going to call it PPVA or "the fund" in this trial,
24 and we're going to show you how Platinum Management, the hedge
25 fund manager, and Mr. David Bodner, with his knowledge,

MBUCpla2

Opening - Mr. Gluck

1 overvalued the assets of this hedge fund causing devastating
2 damage and real economic damage. Why? Because the higher the
3 value of the fund, the more fees the hedge fund managers would
4 get. It's very simple.

5 Sitting at the table over there is Mr. David Bodner.
6 It's plaintiffs' contention, the fund's contention, and
7 Mr. Trott's contention that he was a fiduciary of the fund, he
8 was a senior partner in the Platinum Management company and he
9 personally received fees that were unearned. It's that simple.
10 We want them back.

11 Hedge funds are set up in a very typical way. In
12 fact, our first witness is going to be an expert witness on the
13 subject of hedge funds and how they're set up, both this fund
14 and in general, and what you will see on your screen is that
15 top level Platinum Management New York, that was Mr. Bodner's
16 company, that was the hedge fund manager here that was, guess
17 what, entitled to fees.

18 Investors put their money into the hedge fund just
19 like a bank, but instead of an account balance, you are
20 entitled to shares or limited partnership interests. You get a
21 statement every month in the mail saying what your shares are
22 worth, and we're saying that from 2012, December 2012 all the
23 way to the very last statement the fund ever issued, those
24 numbers were wrong and they were wrong high. Fees were taken
25 by the management company, Platinum Management and Mr. Bodner

MBUCpla2

Opening - Mr. Gluck

1 personally, that they didn't earn and didn't deserve.

2 and 20. Big fact for this case. Many hedge funds
3 are set up in this way and this one was, too. The 2 percent.
4 Platinum Management, the company at which Mr. Bodner maintained
5 an office that he went into every single day or almost every
6 day for a period of 15 years, was entitled to 2 percent of
7 what's called the net asset value of the fund. That's just
8 adding up all the investments of the funds which could be oil
9 and gas, it could be pharmaceutical companies, they invested in
10 real companies.

11 This is a fraud, but not like a Madoff-style fraud,
12 which you'll hear about. This was a fraud where there were
13 real investments and real assets that were just overvalued and
14 knowingly overvalued. 2 percent, the higher the value that's
15 being stated, the more that 2 percent was. PPVA, the fund, the
16 fund that Mr. Trott has been assigned by the Cayman Court to
17 wind down and investigate the causes of its sheer collapse,
18 paid out of its bank account that 2 percent every month or
19 every other month, 2 percent for 10 years. That number was
20 off.

21 The 20 percent. Hopefully, when you invest, you make
22 money. That's the whole point. You find a good business to
23 invest in and you hope that the value of that business goes up.
24 Now, real deal of Platinum Management was, pursuant to a
25 contract, investment management agreement and a general

MBUCpla2

Opening - Mr. Gluck

1 partnership agreement, was that Platinum Management was to get
2 20 percent of the upside, of the increase in value.

3 Now let's be clear, if the fund value stayed the same,
4 that number should be a zero. If it went down, that number
5 should be a zero. We will demonstrate that from December 2012
6 through to 2015, they took incentive fees on fictitious upside.
7 It didn't happen. The fund's assets did not go up. If you
8 find that the fund's assets didn't go up, then every dollar of
9 incentive fees taken by Platinum Management and Mr. Bodner
10 should not have been taken. It's that the simple.

11 What's a hedge fund do? Well, it's kind of what you
12 would think. They bring in investors, people who are looking,
13 who have excess cash, they want to make a little bit of money,
14 and so they put their money into the fund. Then there's a
15 whole company structure – office managers, secretaries,
16 whatever you have to operate the actual logistics of running an
17 investment company.

18 They would identify potential companies to invest in,
19 oil and gas. You're going to hear a lot about that,
20 pharmaceuticals, technology. They would either invest in that
21 company's shares or loan the company money under loan
22 agreements so that they could run and operate. Also, they
23 would -- and this is critical, Platinum Management was
24 delegated the sole responsibility to calculate the value of
25 those assets and the net asset position, and they did so

MBUCpla2

Opening - Mr. Gluck

1 falsely, wrongly, and knowingly, and that is the testimony you
2 will hear over the next couple of weeks.

3 Overvaluation, that is what this case is about. We
4 will demonstrate that the core assets, the core companies that
5 Platinum Management caused PPVA to invest in were stated to
6 have a value way beyond what was the actual truth. For
7 example, there was an investment in an oil company in the gulf
8 of Texas. It was the biggest investment of the fund, it was
9 called Black Elk. You're going to hear a lot about Black Elk.
10 But in November of 2012, there was a devastating explosion.
11 It's about a third of the whole assets. That year, Platinum
12 Management, with David Bodner's knowledge, said its assets went
13 up and they took a cut of the fictitious upside. They
14 shouldn't have. It was wrong.

15 The plaintiff in this case, his name is Martin Trott,
16 and he has a partner named Chris Smith. They are the joint
17 official liquidators of Platinum Partners Value Arbitrage Fund,
18 the fund. Like many funds, it was set up as a Cayman company.
19 Many, many are, there's nothing unusual about it, but when
20 things like this happen, when the fund blows up and goes into
21 bankruptcy, the Cayman Grand Court appoints a fiduciary, a
22 trained accountant and a forensic to pike through what
23 happened, make reports to the court, pay back creditors and
24 investors best they can, marshal assets and, yes, determine if
25 there's an appropriate litigation to bring against those who

MBUCpla2

Opening - Mr. Gluck

were responsible for the fund's demise. What you will hear is that David Bodner is not really one of those persons, he's one of those persons most responsible, and those are the testimonies that you will hear from the expert witnesses and the fact witnesses that we call.

How was it set up? This is a very rough chart. It's designed to give you some familiarity with the structure. The first thing that Mr. Bodner's counsel will tell you is that Mr. Bodner is not on any of the documents. How is that possible? Well, you see at the top where it says Platinum Management New York, that's the hedge fund management company. Mr. Bodner hid his ownership interests through two layers of trusts and subcompanies.

I'll ask you to look at the one that says Mr. Uri, Landesman. He's deceased. He was the former president of Platinum Management. He owned his interests directly. He was on the papers. Mr. Bodner did not. Mr. Bodner held his interests through something called the Mark Nordlicht Transfer Trust. It's hard to decipher, and there's a reason for it. Mark Nordlicht was the manager of the fund, he was the investment manager. The witnesses will testify that Mr. Bodner and his partner, Murray Huberfeld, held themselves out as principals of this fund and took said that they had assigned Mark Nordlicht to run the day-to-day operations, and he did. Mark Nordlicht is going to be a name you hear in this trial

MBUCpla2

Opening - Mr. Gluck

1 over and over again. And it was ultimately Mark Nordlicht, at
2 a day-to-day level, that set these fund values. What you will
3 also hear that Mr. Bodner knew what those values were and he
4 knew they were wrong. That is what the evidence is going to
5 show.

6 These are the persons who were involved in this
7 fiasco. At the top, David Bodner and his partner of 30 years,
8 Mr. Murray Huberfeld. You will hear that they actually
9 operated an unincorporated partnership. They shared profits,
10 they shared losses, they shared revenues. If there was a
11 company that required funding, they would take it from one of
12 their joint developments and move it into the other.

13 Uri Landsman, he was the man I just mentioned, he died
14 a few years ago.

15 Mark Nordlicht, he will be called to the stand. He
16 was the investment manager, day-to-day operations person.
17 You'll see a lot of emails in this case with his name on it.
18 In fact, you will see a lot of emails where he is decrying and
19 upset about the very developments that Platinum Management was
20 saying were going nothing but up. They were not.

21 David Levy was a portfolio manager at the fund and the
22 nephew of Murray Huberfeld. You're going to hear his name a
23 lot, too. He's on some of the documents.

24 And lastly, Bernard Fuchs, he became a minority
25 partner, senior partner, minority partner, Bernie Fuchs, in

MBUCpla2

Opening - Mr. Gluck

1 2014. Why? He was a big investor in this fund. He was one of
2 their original investors, one of their big investors over a
3 long time, and in 2014 in exchange for not pulling his money
4 out, they gave him a 10-percent slice of that management
5 company. You're going to hear from him and he's going to be a
6 witness in this case. You are going to hear from him what
7 Mr. Bodner told him about Mr. Bodner's role at this fund and
8 why he invested.

9 What you're seeing on your screen right now is an
10 excerpt of a document that we have agreed is going to come into
11 this case. It is that monthly NAV statement, it's what's on
12 your screen right now. Now, here's the thing, you see where it
13 says net assets, \$720 million, that was in April of 2016, and
14 this was the last NAV statement the fund ever produced before
15 there were arrests and bankruptcies. This is the last
16 statement, and this statement is glaringly wrong. What we are
17 about here today is just the overvaluation. You will hear
18 things concerning other problems at this fund, but Mr. Bodner
19 is only on trial today for the overvaluation because that
20 \$720 million number was dead wrong.

21 Part of it, \$135 million of it, real money, was
22 purportedly the value of shares that the fund held in a
23 California-based oil drilling company called Golden Gate.
24 Here's the problem, by April of 2016, it wasn't drilling any
25 oil, it was just water, it was a failure. Platinum Management

MBUCpla2

Opening - Mr. Gluck

1 knew that and David Bodner knew that. That value should have
2 been a zero. Golden Gate had \$40 million of creditors it
3 couldn't pay, let alone the shares for the investors being
4 worth \$135 million. We will ask you to find that Platinum
5 Management breached its fiduciary duties and committed fraud on
6 April 2016 when they knowingly put this out and that David
7 Bodner knew the numbers were wrong.

8 Another one. Company called Over Everything. They
9 make T-shirts and funny slogans. It was a real company at one
10 time. You will hear from the principal of this company,
11 Mr. Seth Gerszberg, that it effectively shuttered by the
12 beginning of 2016, yet this is being valued at more than
13 \$22 million, the shares of it. You will hear that Mr. Bodner
14 was aware that the company was effectively shuttered because
15 the very same Mr. Gerszberg made a desperate presentation along
16 with some other stuff at Platinum to Mr. Bodner saying the
17 numbers are all off, the values are close to zero, especially
18 on the oil and gas, and we need more money. That was in
19 January of 2016, this is April, \$22 million.

20 Next one, China Horizon. Great idea in principal. In
21 ruler China, there weren't the sort of 7-Eleven's we have here
22 where people can buy conveniences, Diet Cokes, whatever. PPVA
23 invested in a company that was going to spread out small
24 convenient stores over China. Another problem, though. You
25 will hear from Mr. Bernard Fuchs, that 10-percent share owner

MBUCpla2

Opening - Mr. Gluck

1 who specialized in China that by the time of April 2016, the
2 Chinese government also thought this was a pretty good idea,
3 pulled the license, and set up a competing venture. The value
4 is listed at \$60 million. You'll hear that's impossible. It
5 was knowingly overvalued and Mr. Fuchs specifically told
6 Mr. Bodner about these problems.

7 Black Elk Energy, this is a big one, and this is the
8 one that caused a lot of the other issues in this case,
9 including those arrests. In 2012, Black Elk was the single
10 largest investment held by Platinum. Couple hundred million of
11 actual value. But in November of 2012, there was an explosion
12 on one of the main rigs off the southern coast of Texas. It
13 was a real operating company. You will hear our experts and
14 fact witnesses on the ground, including the later CEO of
15 Black Elk say there was no way that that asset increased in
16 value after the explosion. In fact, they were faced with
17 criminal regulatory problems. People died. It didn't go up.
18 That's what you need to know.

19 Now, in the wake of this explosion, you will hear that
20 it was an all-hands-on-deck situation. Obviously, at Platinum
21 Investment, their biggest investment had literally just
22 exploded. They do two things, and I'm going to do this solely
23 in the context as it relates to overvaluation and not whether
24 it's a fraud or any of the other things that happened with this
25 particular fund.

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Opening - Mr. Gluck

1 The first thing that was done was that a side fund,
2 not PPVA, we're going to call it the Black Elk Opportunity
3 Fund, a one-off thing was set up and just like Platinum
4 Management, Mr. Bodner held an ownership interest in that
5 company through a grantor trust. Mr. Bodner went out and
6 sought investors for this new one-off venture. Mr. Bodner
7 directed others, including Mr. Fuchs, to find investors for
8 this one-off venture and they were successful. They raised
9 \$95 million and put that \$95 million, not through PPVA, not
10 through the fund, but through this side pocket -- excuse me.
11 Sidearm into Black Elk to try to support it. Okay, nothing
12 wrong with that, but we're going to hear from our experts and
13 the former CEO of Black Elk is something called dilution. When
14 someone else puts in money, they're at the debt or in shares,
15 the value is diluted.

16 By 2014, Black Elk oil prices were very high, sold
17 almost all of its assets and operations and rigs and oil
18 fields, that were actually pretty valuable, for \$110 million.
19 You're going to hear about this, it's called the Renaissance
20 Sale, and this is where things get very whacky.

21 After that sale, there's just 10 percent, at most,
22 remaining, and some will say it's a lot less than 10 percent.
23 The worst assets, the worst pieces of oil field, the stuff that
24 no buyer wanted was remaining at Black Elk, and you're going to
25 hear testimony from the CEO of Black Elk, who's a former

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Opening - Mr. Gluck

1 Platinum guy during that period. Those assets were transferred
2 to yet another company that they created called Northstar, and
3 that April 2016 NAV statement, the two entries associated with
4 Northstar that you see on your screen right there,
5 \$114 million, \$76 million, that was what they were valuing the
6 scraps at. The main piece had just been sold for \$110 million
7 when oil prices were at their peak. Two years later when oil
8 prices went down, they're valuing the scraps, and not even the
9 scraps, the shares of the company that own the scraps at
10 \$180 million, you will hear it's impossible. You'll hear it's
11 impossible from the expert witnesses and you'll hear it's
12 impossible from the guy who sold the scraps.

13 How could this happen? How could this happen? It's
14 an SEC regulated fund. It's an audited fund. In fact, you're
15 going to hear one of the defenses that Mr. Bodner is going to
16 give is that he relied on the audited financials. I assumed
17 everything was okay.

18 The first way they hid it was with this Black Elk
19 Opportunities fund. It changed the subject. It created the
20 illusion that these bonds held by Black Elk could still be paid
21 and the illusion that these equity valuations would be valid.

22 Second way was by a company that Mr. Bodner founded
23 and capitalized called Beechwood, and you're going to hear a
24 lot about Beechwood in this case. It was just another
25 investment company, and this one was called Reinsurance. Turns

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Opening - Mr. Gluck

1 out that when insurance companies, they collect their premiums,
2 they hold reserves, they need to pay it out. They actually
3 give that money, those reserves they hold, to someone to
4 invest. That someone turned out to be the same team at
5 Platinum Management plus two insurance specialists, Scott
6 Taylor and Mark Feuer.

7 In 2014, they set up this Beechwood company, take in
8 600 to \$800 million, but then of that, slice it, \$60 million,
9 \$80 million. They pump back into Platinum. Remember I told
10 you that they didn't just invest in companies, they loaned
11 companies money, companies like Northstar, that one that was
12 just set up, technology companies – those are hard loans, that
13 money needs to be paid back.

14 The move here, the way they evaded detection by
15 everyone, except for those in the know, was that they sold the
16 loans from these companies that were bad paper, Golden Gate
17 couldn't pay its bills, it was pumping water. It couldn't pay
18 back 30, \$40 million in loans. They sold them at full value to
19 Beechwood, which these gentlemen controlled and then they just
20 sat on it. Occasionally, they would have the fund, PPVA making
21 interest service payments, and when those stopped, it was
22 actually a crisis that you'll hear about, but at no point were
23 these operating companies actually even paying their own
24 interest bills. But to the outside world, oh, their debt is in
25 good standing. Maybe if you weren't on the ground watching the

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Opening - Mr. Gluck

1 water pull up instead of oil, these stock valuations, they're
2 called level 3 assets, they're hard to say, maybe it's
3 plausible, and that is how, for years, this escaped detection.
4 And David Bodner used the very incentive fees, the LP interest
5 he was being granted wrongly in Platinum to capitalize
6 Beechwood, and also capitalized it with cash, and this we will
7 prove, too.

8 Point being, he helped, actively helped, particular by
9 founding and capitalizing Beechwood. At all times he knew he
10 was on both sides of this thing. He was watching interest
11 payments go out from PPVA and into Beechwood. He knew because
12 he was getting reports from Mark Nordlicht and his other
13 portfolio managers at regular partner meetings.

14 Here's the timeline. This is what we're going to show
15 you over the next two weeks and this is the timeline of
16 Mr. Bodner's knowledge. He's involved in every single one of
17 these issues and events. We have emails to show it. We have
18 calendar invites for the dinner meetings and the partner
19 meetings.

20 Here's the kicker. I showed you April 2016 NAV
21 statements with just those four assets. The ones that I
22 mentioned that were actually zeros by that time, that's nearly
23 \$300 million that they're saying existed that actually didn't.
24 That one circle in January of 2015, Mr. Bodner was given a
25 presentation by a portfolio manager, who you're probably going

MBUCpla2

Opening - Mr. Gluck

1 to hear from, his name was David Steinberg, and another
2 gentleman who owned that T-shirt business who you definitely
3 are going to hear from, his name was Seth Gerszberg. In that
4 presentation, it literally says that these oil and gas assets,
5 the Over Everything company and others are zeros. He was told
6 this in a desperate attempt to raise more money. They were
7 asking for his help and he refused.

8 Now, refusing is not why he's on trial. He's on trial
9 because he had special knowledge and a duty to speak up to stop
10 this thing. He was even a fiduciary. You'll be instructed
11 about what a fiduciary is, someone who is a senior person in an
12 organization that commands respect, whose investors believe he
13 has oversight power. By not disclosing the truth at that time
14 and every other time before it, way back to that Black Elk
15 explosion in 2012, which he definitely knew about, he breached
16 his duties and committed what the law considers fraud, because
17 when you know something is going on and you don't speak up and
18 you know something's going on and you don't stop it, that's
19 fraud.

20 In fact, even before that presentation, next circle,
21 Mr. Bodner and his partners held one of their regular dinners.
22 That's how they would hold their partnership meetings, they
23 would go to out to dinner and they would talk about the
24 business of the fund.

25 You are going to hear testimony about a very heated

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Opening - Mr. Gluck

1 dinner where Mr. Bodner and Mr. Fuchs were yelling at each
2 other. Mr. Bodner was saying the assets were off. Mark
3 Nordlicht was mismarking the funds, high, not low, and as a
4 result – and this shows you his power – Mr. Bodner issued a
5 decree that no partners, himself, Murray Huberfeld, Mark
6 Nordlicht, Mr. Fuchs, and the deceased, Uri Landesman could
7 take any money out of the fund from that point forward and his
8 directive was followed. He was in charge, but that act wasn't
9 enough. He could have stopped this thing in its tracks. The
10 stated reason you will hear from Mr. Fuchs was optics. It
11 would look bad if partners were taking their money out of the
12 fund. He could have said we need to wind this thing down and
13 appoint someone like Mr. Trott. We need to tell investors the
14 truth, that a lot of their money had been lost, not all, but a
15 lot. He didn't, and that was a breach of duty and that was a
16 fraud.

17 THE COURT: You have basically reached the end of your
18 time, but I'll give you a minute or two to finish up.

19 MR. GLUCK: Thank you.

20 As I've said, there was some background issues.
21 You'll hear some stuff about some SEC investigations. They
22 were looking at the same thing, which he knew about, and there
23 were criminal investigations. They were looking at a number of
24 things that he knew about, too, none of which is great for a
25 fund.

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Opening - Mr. Gluck

With my last couple of minutes, we're going to be seeking monetary damages for the fees that they got but they shouldn't have got, the fees that he personally got but he shouldn't have got, the fees that the management company received and they shouldn't have received. Remember, he had that office in the management company, he was using their resources. He could have stopped this, but he didn't, and there's real damage as a result.

The last thing I'm going to mention is something called the release. This is the big defense in this case. Just before that April statement when the walls are crashing in, when there's criminal investigations and SEC investigations, there is another desperate plea to bring in someone to help this management company, not PPVA, Platinum Management New York. And the proposal, as you can see on your screen, was to remove David Bodner and Murray Huberfeld from three layers down of having a beneficial interest in the Mark Nordlicht trust, and replace them with this guy named Marcos Katz, who was also a big investor in the fund and was considering taking over those interests. That's all. None of that would have helped or affected PPVA the fund. They were just getting ready for a deal to swap out these beneficial interests in the management company and they didn't. This deal never went through. David Bodner, Murray Huberfeld demanded a complete release for everything they had done wrong, and that

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Opening - Mr. Gluck

1 release was signed by none other than Mark Nordlicht, who at
2 the time was the head of this Platinum Management company and
3 yes, he could bind PPVA, but he's one of the coconspirators.
4 He's the one who approved all these valuations, he's the one
5 who committed the fraud and the tort in addition to
6 Mr. Huberfeld and Mr. Bodner.

7 What we will ask you to find is not only was this of
8 zero value to PPVA, but it is fundamentally against public
9 policy for this release to be upheld and to have validity,
10 otherwise fraudsters could just release each other at any time
11 and never pay the consequences. This cannot be upheld.

12 We will prove all of these things to you over the next
13 two weeks through witnesses with firsthand knowledge who are on
14 the ground when the water was being pumped, CEO of Black Elk,
15 Mr. Fuchs, two experts, one specializing in hedge funds, the
16 other specializing on the numbers side, the valuation side, and
17 we will convince you that, a, we have met our burden, that
18 there was a fraudulent overvaluation, Mr. Bodner knew about it
19 and did nothing and, in fact, helped it when he had this
20 Beechwood entity, and they will have failed to demonstrate to
21 you that this release should be upheld.

22 Thank you.

23 THE COURT: Thank you very much. We'll hear now from
24 defense.

25 MR. LAUER: Thank you, your Honor.

MBUCpla2

Opening - Mr. Lauer

1 Good afternoon. As Judge Rakoff has introduced us,
2 I'm Eliot Lauer, I represent David Bodner, and together with my
3 colleague, Dave Hertzberg, Julia Mosse and Nathaniel
4 Ament-Stone from whom you'll be hearing a bit during the trial,
5 we're here for Mr. Bodner. We do not represent Platinum
6 Management, we do not represent Mark Nordlicht, we do not
7 represent the managers of the fund. I don't have a lot of time
8 in the opening to respond to each and every comment, but I have
9 confidence in you that you await to see that if those comments
10 can actually be supported with evidence.

11 You may be familiar with the famous children's story,
12 the Emperor's New Clothes. This is a story about two swindlers
13 who come to town. They convince a gullible king that they have
14 magical fabric from which they can make a magnificent robe for
15 the emperor. The fabric is so special that only wise men can
16 see the fabric. The emperor is so excited, he can't see the
17 fabric, he certainly won't admit it. All his ministers come,
18 they look at the fabric and pretend to see it. The swindlers
19 pretend to cut the cloth, measure the emperor, put on this
20 magical robe. Finally, the day comes, they put the robe on the
21 emperor, he opens the door to the square to greet his people.
22 None of the adults in the crowd will acknowledge what they know
23 to be true, they don't see the clothes, but they won't admit
24 it. Finally, a young child, who has not been briefed on the
25 magical qualities of the cloth, sees the emperor and excitedly

MBUCpla2

Opening - Mr. Lauer

1 shouts, the emperor has no clothes. This was a classic tale of
2 spin over substance.

3 You may find the liquidator's case against David
4 Bodner, who's the only defendant in this case, is likewise a
5 case of spin, but not substance. It has no clothes. They
6 claim that David Bodner is the invisible man behind the
7 invisible curtain, that he had decision-making authority at
8 Platinum and that he controlled the affairs of PPVA. As you
9 observe the testimony, as you observe the documents, ask
10 yourself whether you see the clothes.

11 We submit there will be no evidence that Bodner
12 controlled PPVA, there will be no evidence that he somehow
13 controlled Mark Nordlicht, who legally and contractually and
14 actually ran PPVA. There will be no evidence that he had
15 decision-making authority. There will be no evidence he had
16 anything to do with valuations.

17 Plaintiffs' case is about three things. They claim,
18 A, that Bodner was in control; B, that even though he had
19 nothing to do with creating valuations, somehow he came to know
20 that six of these assets were fraudulently inflated, supposedly
21 to steal incentive fees and management fees from PPVA; and C,
22 that David Bodner did nothing to stop this supposed stealing
23 when they had the authority to shut it down.

24 You may find that there is no evidence in this case
25 that David Bodner ever came to know that the assets were

MBUCpla2

Opening - Mr. Lauer

1 fraudulently inflated. Indeed, when plaintiffs suggest or say
2 that Bodner knew, ask yourselves if they actually show you
3 evidence during this trial of exactly what it is that he knew
4 and exactly how it is they say he came to know it.

5 You may find also that plaintiffs like to focus on
6 this early 2015 meeting. What they like to ignore is that long
7 before this 2015 meeting that my colleague mentioned, Platinum
8 Management had suspended taking incentive fees. So PPVA was no
9 longer being forced to pay these fees because there was no
10 money. They weren't selling assets to pay the fees.

11 This case, as my colleague mentioned, is about a
12 fourth thing, and this is important. It's a signed agreement
13 in which Platinum, PPVA, Bodner, Huberfeld, Fuchs, Landesman,
14 and others released each other from any claims. The plaintiffs
15 in this case claim that you should ignore the release because
16 it was a fraud on PPVA. You may find, when we show you the
17 evidence, the exact opposite, that the release transaction was
18 designed to allow Bodner and Huberfeld to basically retire from
19 having any ownership in Platinum and allow Mark Nordlicht to
20 bring in some billionaires, Marcos Katz, Victor Hannah, who
21 Mark was trying to get \$100 million to put into Platinum and
22 the funds so these oil and gas assets could be funded, he could
23 pay for the drilling, he could pay to get the reserves out of
24 the ground. One thing you're not going to hear is any dispute
25 as to the millions and millions and millions of barrels of oil

MBUCpla2

Opening - Mr. Lauer

1 that was in the ground. The problem was you need money to get
2 it out.

3 David Bodner and Murray Huberfeld started Platinum
4 Partners Value Arbitrage Fund in 2003. To run the fund, they
5 brought in Mark Nordlicht, who was an experienced commodity
6 trader. Murray Huberfeld was going to run, during a period of
7 time, the lending side of the business, but the deal was David
8 Bodner made it very clear, I'm going to put many millions of
9 dollars in to seed the fund, I'll be an investor, I'll put
10 money in the fund, as well, but I have no interest in running a
11 hedge fund, I don't want to be part of management, I don't want
12 anyone reporting to me, and I don't want to supervise anyone.
13 That's how it went for the duration of the fund.

14 The case centers on 2013, 2014, 2015, and the first
15 three months of 2016. PPVA was managed by Platinum Management,
16 and you'll see documents in this case where we show you that
17 the way it was structured, Mark Nordlicht controlled 75 percent
18 of the shares of Platinum Management and therefore, he didn't
19 need to talk to anyone or get anyone's approval or agreement in
20 running Platinum Management or in running the fund. He was the
21 boss. Everyone else were limited partners. They had an
22 interest, they had money up, they're entitled to get briefings,
23 but they're not inside. There's a very big difference you may
24 find between having an interest, being an owner, and being on
25 the inside.

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Opening - Mr. Lauer

I'm going to show you a composite chart which shows you all of the managers, accountants, executives, lawyers, compliance people at Platinum Management during the period January 1, 2013 through March 31, 2016. Not everyone was there throughout the period, but you see all those individuals. The point of this is, one, there's no mention of David Bodner. But significantly, you will not hear testimony or evidence that any one of those individuals reported to David Bodner or was supervised by David Bodner or shared weekly, monthly, or annual reports with David Bodner. They were running the fund, they were managing PPVA, and David Bodner was an outside owner and they did not work for him or report to him.

You'll hear about something called ADV forms, which are filed with the Securities and Exchange Commission listing anyone who's considered a control person. These forms, which we'll show you the one filed in 2014, which was signed by Oliver Jimenez, who was the compliance officer, the one filed in 2015, which is signed by David Ottensoser, who at one time was general counsel and compliance officer, and these forms list all of the people.

In fact, we'll show you a page, 16, 17, and 18 from DX 181, this is the one signed by Oliver Jimenez, and you will see beginning at the bottom, that's the beginning of the chart going onto the next page. I'm running through this quickly, but during the course of the trial, you'll get to see this

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Opening - Mr. Lauer

1 close up. Those are the listings of people in different
2 positions at Platinum, and some of them are listed twice who
3 were deemed control persons, and it's up to the compliance
4 people and the lawyers to decide who to put on. Obviously
5 David Bodner is not listed.

6 PPVA had a valuation committee designed to decide what
7 were the values each month of these various assets. That's a
8 composite of the members of the valuation committee. Again,
9 during this three and a quarter period of time. A lot of
10 people, lot of people dealing with valuations. You can imagine
11 trying to figure out what's the value of an oil and gas
12 development property when one month, oil can be \$60, the next
13 month, it is \$40, and the next month, oil is \$100. And
14 basically the way you value these companies is to guesstimate
15 how much oil will come out of the ground over the next number
16 of years and, if so, what's the price of oil going to be when
17 the oil comes out. So there's a lot of conjecture.

18 You'll find that the way they do their valuations is
19 they come up with wide ranges. You can have a valuation of an
20 oil and gas field that could run anywhere from \$250 million to
21 \$350 million, and anywhere in that range, the accountants and
22 the value waiters will tell you is reasonable because there are
23 so many variables. Who knows exactly what oil will be selling
24 for or exactly how much oil you will actually get out of the
25 ground during some period of time. No one on the valuation

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Opening - Mr. Lauer

1 committee submitted reports to Bodner, communicated with Bodner
2 about any of the valuation issues.

3 PPVA also had auditors on an annual basis. They would
4 come in and submit, under law, audited financial reports with
5 their auditor's opinion. For example, we will show you the BDO
6 independent auditor's report on their audit of PPVA for 2013,
7 this included Black Elk. This is a year after the explosion.

8 By the way, the explosion obviously had an impact on
9 the business, but during the course of the trial and when
10 you're asked to review this case, you have to connect the
11 rhetoric and the event with the dollars. In other words, no
12 one will dispute that having an explosion on an oil and gas
13 well is something that you don't want to have, but does it have
14 a \$50 million impact, a \$100 million impact, is it covered by
15 insurance? All those things need to be considered. And what
16 you'll see, according to the audited financials that BDO signed
17 off on, which is DX 569, they said in their opinion, as of
18 December 31, 2013, this is a year and a quarter after the
19 explosion, PPVA's numbers were set forth in accordance with
20 generally accepted accounting standards.

21 At that time, Black Elk was listed as having a value
22 of \$148 million, and that was confirmed by the auditors.
23 Golden Gate, an oil and gas development property in California,
24 was confirmed at a value of \$173 million. For 2014, Cohn
25 Reznick's independent auditors report gave PPVA and the

MBUCpla2

Opening - Mr. Lauer

valuations a clean opinion, and there the principal assets were Golden Gate, now valued at only \$140 million because of the drop in oil prices. And Northstar, the one that was mentioned and included the Black Elk assets, but also new assets that were put in, \$138 million.

The auditors communicated with key people at Platinum, and you'll see various forms from their work papers of who the principle members of management were. You will see their fraud risk inquiry form listing the management personnel that they interviewed. They talked to Manela, Nordlicht, Mandelbaum, Ottensoser, Sasha. You'll see a separate list from the work papers of key employees they interviewed. SanFillipo, Duch, Friedman, Rakower, none of them communicated with Bodner and apparently no one ever told any of the auditors that Bodner was the man in control or someone that they should speak to.

You would think if Bodner had decision-making authority and had knowledge of, if you will, how the sausage was being made, you would see communications and they would show you communications on a regular basis from the managers, such as, Mr. Bodner, or David, here's our proposed valuation for this month, what do you think. Here's our financial statements, here's a script Mark Nordlicht is going to use this month when he does the call with investors. Here are the weekly reports from each of the portfolio managers on each of the businesses so you have detailed knowledge of what's going

MBUCpla2

Opening - Mr. Lauer

1 on. In short, the kind of regular detailed information you
2 would expect a boss to receive if he or she were actually
3 managing the company.

4 Instead, you're going to find miscellaneous emails
5 here and there which prove just the opposite. Indeed, if
6 Bodner had decision-making authority, you would think he at
7 least could write a check at Platinum Management. Another
8 document that you'll see from the audit work papers is a signed
9 written consent form given to the auditors by Platinum
10 Management, that's the one that was given to Cohn Reznick, and
11 it lists all the individuals who can sign checks, who have
12 authorization with respect to any of the bank accounts under
13 the control of Platinum Management. Bodner cannot even write a
14 check for Platinum Management without asking someone's
15 approval. He had no check writing authority. Indeed, he was
16 so not in management that when Mr. Trott took over beginning in
17 the summer of 2016, and he was there for a number of months,
18 apparently no one told Trott that Bodner was such an important
19 person that Trott should speak with him. Trott did not reach
20 out to Bodner, didn't even know Bodner had a role. That's how
21 uninvolved Bodner was in actually running the business.

22 Now, you've heard about the management fee and the
23 incentive fees. In addition to receiving a portion of the
24 incentive fees, because he was an owner and a founder, Bodner's
25 family had over \$40 million invested in the funds. Some of it

MBUCpla2

Opening - Mr. Lauer

1 was in the PPVA fund and some of it was in the sister fund,
2 PPCO. The other managers, Huberfeld and Nordlicht, also had
3 significant family money. This was his major investment and as
4 you can imagine, it was all lost. This isn't a case of Bodner
5 leaving other people holding the bag, he lost his entire
6 investment.

7 Now, as a founder and as an investor, he was given an
8 office, a shared office, a shared secretary at Platinum, and he
9 would come in several times a week to work on his own
10 investments, to occasionally meet with Nordlicht and others
11 because they had a number of charity activities that they did
12 together, and they had private developments outside of
13 Platinum, and from time to time someone would consult him on a
14 Platinum Investment, but he's not on the inside.

15 Now, you may find that giving someone an office or a
16 shared secretary doesn't make them in control. For example,
17 Michael Katz, one of the JOL's listed witnesses in this trial,
18 was given an office because his family had a large investment
19 and he needed a place to work. He was even given a Platinum
20 email address.

21 Similarly, Bernie Fuchs, who you will hear from,
22 another listed witness, before he became a partner for a number
23 of years had an office there because he also was an important
24 investor.

25 Testimony and documents will show you how out of touch

MBUCpla2

Opening - Mr. Lauer

1 with the details Bodner was. And I'm going to show you an
2 email that was exchanged between Mr. Nordlicht and his
3 executive colleague, David Levy. If you look at the bottom of
4 that email, it starts at the very bottom, mark Nordlicht says,
5 stop talking to Bodner, please. How many times do you have to
6 do that. And Levy says, about what? What happened now? And
7 then Nordlicht says, he is a busy body. Just control the
8 information flow to him, please. Better yet, don't talk to
9 him. And then Levy says, okay, I don't think I said anything
10 bad to him, I will tell him I don't know when he asks.

11 You may find from your own experience a busy body is
12 not the boss, nor does it seem the managers, Nordlicht, Levy,
13 the others are sharing critical information with him.

14 You've heard a little bit about these level 3 assets,
15 which are basically hard to value assets because they're not
16 traded on an exchange and they're unique. How do you value
17 three thousand acres in California that has oil in the ground
18 and you need to figure out where to put the drills and how to
19 do the drilling? Do you go straight down? Do you do it
20 diagonally and so forth?

21 One thing is clear, Golden Gate, the oil property in
22 California, had 18,700,000 barrels of proven reserves. If you
23 think about it, at just \$60 a barrel, that's close to a billion
24 dollars if you get it out of the ground, minus your expenses.
25 That's how they were doing these valuations. You look at the

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Opening - Mr. Lauer

1 engineering reports demonstrating what's in the ground and you
2 estimate how much will it cost you to get it out of the ground
3 over what period of time and what is the prediction for oil
4 prices during the period of time that you get it out.

5 (Continued on next page)

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Opening - Mr. Lauer

1 MR. LAUER: Just one other word on Black Elk because
2 an explosion resonates, and my colleague spent a lot of time on
3 that. The explosion was in November of 2012. Their expert,
4 Mr. Quintero, who came in and expressed his opinion on when the
5 assets in PPVA were inflated, has expressed an opinion that as
6 of December 31, 2012, there was no inflation. His report
7 starts January 1, 2013. So after the explosion, he does not
8 express an opinion that the Black Elk asset was actually
9 inflated. So what that means is they adjusted whatever the
10 values would have been to include any accommodation that
11 insurance did not cover, if it didn't cover it fully.

12 Now, Quintero is going to come in and he is going to
13 say he didn't do valuations the way the valuing people did,
14 Alvarez & Marcel and Sterling; he didn't do valuations the way
15 the auditors did, which is look at the reserves and try to
16 estimate what the value will be when the oil comes out of the
17 ground. He didn't do any of that.

18 What he did is he looked at what happened after the
19 meltdown at Platinum and he said, well, if that's all you have
20 got after the meltdown, well, I'll work backwards and use that
21 as the basis for my calculations.

22 And you may find his work is like taking a price in
23 early in 2020, during the COVID -- let's say March or April of
24 2020, when things went way down because of the lockdown, and
25 using those numbers to value something six months earlier in

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Opening - Mr. Lauer

1 2019 when the economy was robust. Think of that when you hear
2 Quintero and wait for us to examine.

3 Because investors come and go with a hedge fund, if a
4 hundred million dollars goes out and 50 million dollars comes
5 in, there is going to be a deficiency of 50 million, and that's
6 what happened to platinum in 2014 and 2015. People took money
7 off the table because Platinum had been doing well and there
8 was a significant imbalance. It's what we call a liquidity
9 problem. They didn't have money and they had to use as much
10 money as they had to pay investors who were pulling money out
11 of the fund and that meant that they couldn't put money into
12 the oil and gas wells. So if they put money in the oil and gas
13 wells, they had to delay the withdrawals by the investors. It
14 created a lot of stress.

15 You will see that beginning in the early part of 2014,
16 the early part of 2014, this is before Bernie Fuchs became a
17 partner, they stopped charging the dollars for the incentive
18 fees. By 2015, Mark Nordlicht was keeping the money in the
19 fund to run these assets. They stopped taking some of the
20 management fees. In fact, Nordlicht mortgaged an apartment to
21 get \$7 1/2 million to put into the fund in order to pay
22 salaries and keep the fund going so as not to hurt the oil and
23 gas assets.

24 At this meeting that he talked about, you are going to
25 see that David Bodner expressed a view that Mark was

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Opening - Mr. Lauer

1 essentially encouraging people to take money out and Mark
2 Nordlicht told David Bodner: You have no idea what you are
3 talking about. You don't know how to run a fund. Go back to
4 Monsey where you live and that was the end of it.

5 Bernie Fuchs didn't cut and run. Nobody cut and run.
6 They continued to believe in Mark, they continued to believe in
7 that fund, and for a year a half they worked diligently to try
8 to save the fund.

9 So I am going to talk a little bit about this release.
10 2016, Mark Nordlicht is desperate to get money into the fund.
11 He says to Huberfeld and Bodner: You guys have been partners
12 for a long time, you have been clipping coupons, you have been
13 taking the money from the fees, and you are not putting
14 anything back. Will you put new money in so we can have some
15 liquidity?

16 And Bodner and Huberfeld said: No. We don't want to
17 put any more money in.

18 And Nordlicht said: So will you withdraw or retire
19 from the fund so I can offer your shares to someone else? I
20 have got Marcus Katz who is a Mexican billionaire. He is
21 already an investor in the fund. He will come in.

22 They agreed to step out and, as part of that release
23 transaction, we are going to show -- we will show you during
24 the course of the trial—because I am running out of time—we
25 will show you the signed release agreement in which Murray

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Opening - Mr. Lauer

1 Huberfeld and David Bodner agreed to give up their interest and
2 Mark then offered that interest to Marcus Katz.

3 Marcus Katz got to the point of signing a series of
4 complex business agreements with Platinum. But the day after
5 the signed agreements were submitted, in June of 2016, Murray
6 Huberfeld was arrested on an unrelated matter that had nothing
7 to do with David Bodner, and basically one thing led to the
8 other and the fund collapsed. But you will see in the evidence
9 that this agreement was not one fraudster, if you will, helping
10 another fraudster but, rather, one very desperate but sincere
11 manager trying to get money into a fund. He was going to get
12 at least \$10 million from Marcus Katz to start and he was
13 looking to get \$50 million from a guy named Victor Hanna who
14 was going to put money in and that money will enable the fund
15 to survive, and that's what this is going to be about.

16 I want to say one last thing. Bodner and Huberfeld
17 left the fund. They performed their part of the agreement.
18 Bernie Fuchs signed that release agreement releasing them, and
19 he was so annoyed when the JOL sued him in this case, along
20 with David Bodner, later he settled with the JOLs, he filed a
21 cross-claim against David Bodner saying: I'm blaming you.

22 We sent his lawyer the release agreement. We said:
23 This is a valid release agreement.

24 The lawyer said: Well, Bernie didn't tell me. I
25 didn't know about this. You are absolutely right, this release

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Opening - Mr. Lauer

1 agreement is a valid, binding, enforceable agreement, and they
2 dropped the claim.

3 So I will have the opportunity at the end of this case
4 to sum up this evidence. Our argument, as the Court has
5 instructed you and will instruct you, is just argument, but I
6 will have the opportunity in a more organized fashion to show
7 you (a) that they will not offer you evidence, proof that
8 Bodner directed anything at Platinum Management. He clearly
9 had an interest, but he was on the outside. He was a busy
10 body. They weren't sharing detailed information with him. He
11 never had any detailed information that could challenge the
12 valuations that Mark Nordlicht was using.

13 Two, we are going to show you that he never came to
14 know that these assets were fraudulently inflated.

15 And (c) and you can end it right there, you are going
16 to see that the purpose of this release was total good faith,
17 totally -- total good faith of guys who basically said, okay,
18 we have made enough, we are retiring, we see that the fund is
19 teeter-tottering, and if new money doesn't come in, this fund
20 may not survive. Take the money from Katz. Take the money
21 from Hanna. We are walking out. We didn't run the fund.
22 Bodner didn't run the fund. Traditionally, when you exit a
23 business, you get a release.

24 And by the way, one last thing. This release was
25 approved by Marcus Katz's lawyer. And you are going to hear

MbuwPla3

1 from Marcus Katz's lawyer, Isaac Neuberger. He is a senior
2 partner in a prestigious Baltimore law firm. He is going to
3 come here and he is going to tell you that this was a real
4 deal, Marcus Katz was going to put money in. He is going to
5 tell you who Marcus Katz was and what he would have represented
6 to this fund if he was in this fund. And you are going to see
7 that with that money and with the 50 million they were trying
8 to get from Victor Hanna, they could have saved this fund. It
9 didn't happen, but that doesn't change the release, which was
10 not dependent on Katz or Hanna.

11 I appreciate your attentiveness, and I look forward to
12 addressing you again in a more coherent fashion at the end of
13 the evidence to show you, and I hope you will find, then, that
14 David Bodner did not control, did not know. And frankly you
15 will not see, I think, that the emperor has clothes. Thank you
16 very much.

17 THE COURT: Thank you very much.

18 So ladies and gentlemen, don't worry about the fact
19 that you have now heard about lots of names and lots of events.
20 All of this will be made very clear to you as we move forward.
21 It always is hard just at the beginning to follow absolutely
22 everything, but that's why we have two weeks to do it and not
23 just one hour.

24 Normally we take our lunch at 1:00, but I think maybe,
25 given where we are at, it makes more sense to take our lunch

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1 now. And even better, normally I would give you an hour, but
2 I'm going to give you an hour and a quarter because I have to
3 take up some matters with counsel. So -- and I want to give
4 them a lunch break, too. So we will break for lunch now and we
5 will resume at 1:50. Have a very good lunch. We will see you
6 then.

7 (Continued on next page)

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1 (Jury not present)

2 THE COURT: Okay. So Mr. Ostrove called back and he
3 has now been authorized to arrange Mr. Gerszberg's appearance
4 here in court. I, of course, am very disappointed that I
5 didn't have to send out the marshals, but I will survive
6 somehow.

7 Mr. Ostrove says the best way to reach him is at his
8 cell number, which you already have, but just again for the
9 record it is 732-489-6241. However, while you should only talk
10 to Mr. Gerszberg after you receive permission to do so from
11 Mr. Ostrove, Mr. Ostrove thinks at the end it may be simplest
12 just to talk directly to Mr. Gerszberg, and he did tell my law
13 clerk that we could give you Mr. Gerszberg's number, which is
14 848-330-0880. Let's start with Mr. Ostrove.

15 Now, let me find out what was the problem with the
16 witness that the defense had a problem serving?

17 MR. AMENT-STONE: Thank you so much, your Honor. I'll
18 try to be brief on this.

19 This motion was to Mr. Murray Grenville, who is the
20 founder and CEO of Sterling Valuation Group, which performed
21 valuations of PPVA assets for most of the relevant period
22 through, I think, the second quarter of 2015, so his testimony
23 is important for that reason.

24 We first began trying to serve him in February and
25 March of this year. We were in discussions with Todd Harrison

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1 of McDermott Will & Emery, who we understood to be his counsel
2 because he is his counsel in a Platinum-related litigation
3 actually, which is -- which was brought against Sterling, to
4 represent Sterling in that matter, and he spoke with us about
5 the subpoena. We had back and forth—even, I would say,
6 negotiations—over the course of several months. we attempted
7 to serve Mr. Grenville at Sterling's offices in Manhattan,
8 where access was denied. We attempted to serve at his home in
9 Jersey City and found out that he was in Hong Kong and expects
10 to be in Hong Kong for an indeterminate time.

11 We spoke with Mr. Harrison, who proposed that a
12 pretrial deposition be taken, and I believe plaintiffs did not
13 want to proceed in that manner. And we understood Mr. Harrison
14 to be working with us on behalf of Mr. Grenville. He then
15 later said to this Court that he doesn't represent
16 Mr. Grenville in this matter.

17 So in sum, we have tried I think eight formal service
18 attempts in addition to a lot of e-mail correspondence and
19 phone calls with Mr. Harrison between February and November of
20 this year.

21 THE COURT: Let me start with Mr. Harrison. What's
22 his phone number?

23 MR. AMENT-STONE: So I only have his office number
24 which is 212-547-5727.

25 THE COURT: Okay. And do you have any phone number or

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1 e-mail for Mr. Grenville?

2 MR. AMENT-STONE: Well, there would be his Sterling
3 e-mail address. I don't think we have a phone number for him.

4 THE COURT: This is the company that he is the head
5 of?

6 MR. AMENT-STONE: Yes. He is the CEO of Sterling.

7 THE COURT: The company's principal place of business
8 is in Manhattan?

9 MR. AMENT-STONE: Madison Avenue, yes. And we did
10 attempt formal service at that office, but access was denied to
11 the process server.

12 THE COURT: All right. Let's first start with
13 Mr. Harrison and see what we can do.

14 (Pause)

15 THE COURT: So there is no answer at the number you
16 gave me for Mr. Harrison and no voice mail. Is he with a law
17 firm?

18 MR. AMENT-STONE: He is with McDermott Will & Emery.

19 THE COURT: What's their main number?

20 MR. AMENT-STONE: Let's see here. We also do have an
21 office phone for Mr. Grenville. However, we do understand he
22 is in Hong Kong, so I'm not sure if the number is forwarding.

23 THE COURT: Well, let's start with McDermott.

24 MR. AMENT-STONE: McDermott, 212-547-5400.

25 THE COURT: What's Mr. Harrison's first name?

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1 MR. AMENT-STONE: Todd.

2 THE COURT: Excuse me?

3 MR. AMENT-STONE: Todd, T-O-D-D.

4 (Telephone conversation between the Court and Todd
5 Harrison)

6 THE COURT: So you heard all that, but just for the
7 record, I had a delightful conversation with Mr. Harrison and
8 he reiterated that he doesn't represent Mr. Grenville for these
9 purposes. He said that Mr. Grenville felt he had been dragged
10 through the mud, was his term, for something that he shouldn't
11 have been involved in at all. And I said, you know, that may
12 or may not be, but that doesn't justify evading service.

13 So he is going to reach out to Mr. Grenville and
14 report back to my law clerk at 9 a.m. tomorrow, and I am quite
15 confident that we will, as we did in the case of the other
16 witness, get a prompt resolution that will be satisfactory.

17 All right. I suppose you actually want to have lunch.
18 Well, all right. So we will see you in an hour.

19 COUNSEL: Thank you.

20 (Luncheon recess)

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1 A F T E R N O O N S E S S I O N

2 2:05 p.m.

3 (Jury not present)

4 THE DEPUTY CLERK: May I bring in the jury?

5 THE COURT: Yes. Let's get the witness on the stand.

6 MR. GLUCK: Plaintiff calls William Post.

7 (Continued on next page)

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Post - Direct

1 (Jury present)

2 THE COURT: The jurors can always be seated right away
3 when you come to your seats. We are standing in honor of you.
4 You are the boss, but you get to sit down.

5 Now everyone else can sit down as well.

6 So let's swear in the witness.

7 THE DEPUTY CLERK: Do you want to call your witness?

8 MR. GLUCK: Yes. The plaintiff calls Mr. William
9 Post.

10 WILLIAM POST,

11 called as a witness by the plaintiffs

12 having been duly sworn, testified as follows:

13 THE DEPUTY CLERK: Please state and spell your full
14 name for the record.

15 THE WITNESS: My name is William Post, or Bill Post as
16 I am known professionally. My first name is W-I-L-L-I-A-M,
17 last name Post, like post office. And my first name I use
18 professionally is Bill.

19 THE COURT: Counsel.

20 DIRECT EXAMINATION

21 BY MR. GLUCK:

22 Q. Mr. Post, thank you for being here today.

23 Have you been engaged by Mr. Martin Trott,
24 Mr. Christopher Smith, and Platinum Partners Value Arbitrage
25 Fund, which I will refer to as PPVA or "the fund," to act as an

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Post - Direct

1 expert witness in this matter?

2 A. Yes, I have.

3 Q. Would you please provide a brief synopsis of your
4 experience in the hedge fund industry for the jury.

5 A. Yes, I will. Can I start with my academic background?

6 Q. Of course.

7 A. I am 68 years old.

8 THE COURT: Is that part of your academic background?

9 A. I attended the University of Virginia and received a
10 degree. I am a Viet Nam era veteran. When I graduated from
11 University of Virginia, I became a naval officer, and in the
12 Navy I was a finance and logistics officer. After graduating
13 from the University of Virginia, I attended the Navy
14 postgraduate school and finished a program in finance, and then
15 for the remainder of my naval career I was the chief financial
16 officer at two naval air stations on the west coast.

17 I then attended law school, graduated, and practiced
18 law as a securities attorney, where I represented hedge funds
19 and investment organizations.

20 After approximately eight years as being a lawyer, I
21 became a stockbroker and became an investment professional for
22 another almost 30 years.

23 My other academic qualifications is that I am a member
24 of the CFA organization, which is the professional organization
25 for investment managers. I have also completed a program at

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Post - Direct

1 Harvard Business School in investment management. I have also
2 completed the financial analyst program at Northwestern
3 University. And I am also a lecturer at the University of
4 California Berkeley campus in the Haas Business School, and I
5 teach stock market dynamics.

6 My career as an investment professional started out,
7 as I mentioned, as a stockbroker and I eventually became a
8 portfolio manager. I have been the chief investment officer of
9 many organizations. I have been the CEO and also the chief
10 compliance officer of an SEC-registered RIA, which is very
11 similar to Platinum or if not identical, which is one -- the
12 entity that we are going to be talking about today.

13 I was also the president of the alternative asset
14 business at Franklin Templeton, a company you may know. While
15 I was there, I ran a hedge fund of funds, and what that was, it
16 was two different investment strategies where we employed --

17 (Court reporter confers)

18 A. Fifteen hedge funds. We had two funds with 15 managers in
19 each fund, and to select those 30 managers for those two
20 different funds, I have probably interviewed close to a hundred
21 hedge funds and examined their management, their investment
22 activities.

23 For the last eight years I have been an expert witness
24 in investment fraud and investment schemes. I have been an
25 expert witness in over 25 matters. I am currently working for

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1 the Securities and Exchange Commission in their enforcement
2 division. I worked on one of the largest -- second largest
3 hedge fund Ponzi scheme, which was the Allen Stanford Ponzi
4 scheme, where there was \$10 billion stolen from investors. I
5 have worked on several other Ponzi schemes. I have worked on
6 many investment matters related to hedge funds and investment
7 organizations.

8 I am an expert in investing money and I am an expert
9 in how investment organizations, including hedge funds, are
10 managed and operated. I understand the ownership structure of
11 these types of organizations. I understand how fundraising is
12 conducted. I understand the relationships between limited
13 partners and passive investors in the management team, and I
14 have testified and been hired as an expert many times on
15 various schemes where investment management companies hide
16 their activities or try to deceive their investors and/or
17 government and regulatory agencies.

18 Q. Thank you.

19 In connection with your role overseeing those roughly
20 40 investment managers, your fund-of-funds oversight, what was
21 your job in respect of supervision in terms of how those hedge
22 fund managers were performing their roles?

23 A. Well, those two funds had an investment strategy. And so
24 we originally -- our first step is to figure out whether we can
25 find the hedge fund that is doing the type of investing that

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1 matches our investment goal. But the real devil is in the
2 details. It is not just that they say they can do something
3 like these hedge funds, it's actually whether they are
4 competent investment professionals. So do they do a good job
5 of investing your money?

6 But then there is also a question about whether or not
7 they also have the capability. Just because you are a good
8 investor doesn't mean that you are a good manager of the
9 business. So we looked very carefully at the management of
10 those hedge funds, which is just the day-to-day operations, as
11 well as looking at their investment management operations.

12 And so and then we also -- once we hired them, we were
13 very concerned about monitoring their activities and making
14 sure that they didn't deviate from their investment strategies.
15 But also if they had changes in personnel or in their ownership
16 structure or management team, that we identified those and
17 continued to monitor them. So we would go back to those funds
18 on a very regular basis, at least twice a year, go to their
19 offices. We would talk to the people who were running the
20 business we would talk to their employees. We would make sure
21 that they were in compliance with the Securities and Exchange
22 Commission rules and regulations.

23 So it's very important in the investment business that
24 you follow these guidelines because you are there obviously to
25 make money for the investors, but you have to protect the

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Post - Direct

1 investors and you also have to make sure that you are in
2 compliance with a variety of things that allow, for example,
3 the SEC to come in and examine your books and records and the
4 way you operate. They want to know that you are doing things
5 according to Hoyle. So it's really crucial when you are
6 looking at these businesses that you look into all those
7 details, make sure that they are presenting reports and doing
8 things correctly.

9 So I learned a lot in interviewing a hundred different
10 hedge funds and their management teams about how hedge funds
11 operate, how they are managed, how they make investment
12 decisions, how their valuation committees work, how they
13 produce reports, how they raise money, how they administer
14 their funds when people are investing new monies into a fund or
15 withdrawing money, etc.

16 Q. Thank you.

17 In connection with this case, Mr. Post, were you asked
18 to analyze the structure of Platinum -- PPVA's hedge fund
19 manager, Platinum Management?

20 A. Yes, I was.

21 Q. Were you asked to analyze the methodology by which Platinum
22 Management valued the fund's investments?

23 A. Yes, I was.

24 Q. Were you asked to analyze the actual control and management
25 exerted by the various human beings within that Platinum

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Post - Direct

1 Management office?

2 A. Yes, I was.

3 Q. Were you asked to analyze the relationship between Platinum
4 and a reinsurance company called Beechwood?

5 A. Yes.

6 Q. Were you asked to analyze the relationship between Platinum
7 and another fund called the Black Elk Opportunities Fund?

8 A. Yes, I did.

9 Q. Have you formed views as to all of these matters?

10 A. I have formed views as to all of these matters that I was
11 asked to look at.

12 Q. What records or documentations do experts in your position,
13 tasked with the exercises I have just referenced, look at in
14 order to form the views that you formed?

15 A. Well, it's pretty straightforward. First off, we look at
16 the organizational documents. Some of those were referenced
17 earlier today, like the filings that are required with the SEC.
18 But there are documents which are used which are the fund
19 company, and then the fund company is the entity that collects
20 the money. And then there is a management company that manages
21 those monies and makes the investments. So we look at what we
22 call the formation documents that basically describe what they
23 are going to do, how the companies are organized and structured
24 from a management perspective, how they are organized from an
25 investment perspective.

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1 Then in this case I have also looked at many, many
2 e-mails and records that were produced by Platinum and
3 Beechwood and Northstar and Black Elk Opportunities Fund. I
4 have also reviewed testimony. So a lot of the people who are
5 going to be talking today to you folks gave depositions, and
6 they talked in the first person about what they saw, so I
7 reviewed those deposition transcripts.

8 THE COURT: Let me just interrupt to tell the jury
9 what a deposition is.

10 In any civil case, before the case goes to trial, both
11 sides can take the testimony of witnesses for the other side or
12 of third-party witnesses and that is called a deposition. And
13 some of that may come into evidence later, we will see, and I
14 will give you further instructions if it does. But right now
15 it is just of relevance because the expert said he had reviewed
16 them.

17 So go ahead.

18 A. And then in this matter there was also I think a
19 significant document which was a deficiency letter which was
20 issued by the Securities and Exchange Commission. So one of
21 the things I referenced earlier is that the Securities and
22 Exchange Commission most likely on an annual basis comes into
23 an investment business and actually does an audit. They go
24 through the books and records and the processes of the company,
25 and so there was I think a very important piece of evidence in

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Post - Direct

1 this case which was the results of the Securities and Exchange
2 audit, and it's called a deficiency letter which they issued,
3 which is rather comprehensive about a description of things
4 that Platinum did -- didn't do properly.

5 Q. Thank you.

6 Let's start at the beginning. We will call up that
7 letter in a few moments, but for a jury who -- some of whom may
8 be hearing about a hedge fund for the very first time today,
9 let's start with a very basic question. What's a hedge fund?

10 A. Well, a hedge fund is an investment business. It's an
11 investment company. And we use the word hedge fund, it's kind
12 of a misnomer. It's not really an accurate word. But it
13 primarily refers to two things—the management fee that a hedge
14 fund is entitled to charge the investors, which is typically 2
15 percent annually; and then, what we call 2 and 20, a 20 percent
16 incentive fee which the investment management company or the
17 hedge fund is entitled to take of the gain in value. So if the
18 fund gains \$100 in one year, they not only get their 2 percent
19 management fee on the \$100, but they get -- or the total value,
20 they also get 20 percent of that \$100 that they earned, so they
21 get \$20. So we call it 2 and 20. But that general structure
22 of 2 percent management fee and a 20 percent incentive fee is
23 usually the way we describe how hedge funds are compensated for
24 their work.

25 Q. Was PPVA, the fund in this case, a hedge fund like you just

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Post - Direct

1 described?

2 A. Yes, PPVA was a hedge fund where they were entitled to
3 receive 2 percent of the assets they managed, and if they had
4 positive gains, they were entitled to 20 percent of the upside
5 annually.

6 Q. Now, I think you have just referenced a hedge fund manager.
7 What is a hedge fund manager and who was PPVA's hedge fund
8 manager here?

9 A. So I mentioned earlier that the company that actually
10 receives the investments is PPVA. So all the money that was
11 raised from all of the investors all over, onshore and
12 offshore, all of that money flowed into PPVA. But there has to
13 be somebody to manage that money, and that's Platinum
14 Management. So that's the management company. And those are
15 the investment professionals and the administrative folks that
16 are managing the funds. So Platinum Management was the manager
17 of PPVA, of Platinum Partners.

18 Q. Was Platinum Management regulated by the SEC?

19 A. Yes. It's an investment organization, and they are
20 required to operate in a manner that is consistent with the
21 Security and Exchange rules and regulations. They have to
22 adhere to their fiduciary duty. The fiduciary duty is owed to
23 the investors, and they have to be in compliance. So, yes,
24 Platinum Management, the management company, is regulated by
25 the Securities and Exchange Commission and the rules and

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1 regulations are the responsibility to be adhered to by the
2 people that work there.

3 Q. You mentioned this 2 and 20 structure. In this case, did
4 the documents governing PPVA and Platinum Management provide
5 for this 2 percent fee and 20 percent upside structure you
6 described?

7 A. Yes, they did.

8 Q. Can you please explain what the phrase "net asset value"
9 means within the hedge fund context and specifically as that
10 word is used within the relationship between Platinum
11 Management and PPVA, the fund?

12 A. That's a very important term, net asset value. It's
13 important for a couple of reasons.

14 Number one, if you are an investor, the net asset
15 value is what the pool of money is worth at any one time,
16 right? It's like you put in \$200 million and your investment
17 goes up to 300 million, you can make a calculation and what net
18 asset value means is that you take the assets that are owned by
19 the fund and you subtract the liabilities. So that's why we
20 call it net asset value, NAV.

21 That NAV number not only tells the investor what the
22 total investment is, so you can do the math, if I own 10
23 percent of that, I know what my investment is now or at any
24 given time. But then most importantly for Platinum Management
25 and for the fund, the net asset value is how you calculate your

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Post - Direct

1 2 percent management fee and whether you are entitled to an
2 incentive fee. If the fund's value goes down, the net asset
3 value decreases, you are obviously not entitled to any
4 incentive fee. Likewise, if the fund value declines, your 2
5 percent is a smaller number. So you would get less management
6 fees if the fund was losing value.

7 Q. Thank you.

8 In relation to the calculation of net asset value,
9 what is the relationship between loans or debt on an asset and
10 the value of the asset? And I will give you an example that
11 perhaps some of the folks can understand.

12 If the fund had bought a home for a million dollars
13 but also had a loan, a mortgage, on that home for 500,000,
14 could you please explain for the jury how the net asset value
15 of that home would be calculated from the fund's perspective.

16 A. Well, the way -- the analogy I have used is--you probably
17 all know this—if you own a house and you have a mortgage, if
18 your house is worth \$2 million and you have a million dollar
19 mortgage, what's the value -- what's the net asset value of
20 your house? It's the \$2 million value, the market value, minus
21 the mortgage of a million dollars, so you have a million
22 dollars in equity. So that's what your net asset value of your
23 home was.

24 Now one other concept here—you are going to hear me
25 talk about this and other folks—is a bond. What's a bond? A

Mbu2Pla3

Post - Direct

1 bond is just like a mortgage. So a bond is something that
2 could be issued—you probably know this—by municipality or the
3 U.S. government or a state, but companies also issue bonds in
4 exchange for loans. So a bond is in essence just like a
5 mortgage. The company needs money, so they issue a bond, and
6 the bond is an obligation of the company to pay a certain
7 return on the money that they have borrowed.

8 Q. In addition to debt or bonds that may exist within the
9 companies in which a fund like PPVA invested, could PPVA itself
10 borrow money or issue the security of the type you just
11 described with respect to bonds?

12 A. No, they couldn't. I'm not sure that I answered your
13 question because I think what I left out was that if there is a
14 loan and you are talking about net asset value, the fact that
15 you owe money reduces the net asset value. It's a liability.
16 So it's just like a mortgage but I want to be clear about that.

17 Would you please repeat the question again?

18 Q. Sure.

19 And in addition to, for example, bonds that -- debt
20 that may have been issued by companies like Black Elk in which
21 PPVA was invested, were you asked to analyze borrowings debt of
22 PPVA, the fund, itself?

23 A. Yes. So the way a hedge fund operates is that they invest
24 in companies. Sometimes it's a public company that you could
25 buy the stock on the stock exchange, but in this case it was

Mbu2Pla3

Post - Direct

1 almost exclusively private companies. Each one of those
2 companies we call a portfolio company. So the portfolio
3 companies make up the assets or those are what you are
4 investing in as the fund here, Platinum, was investing in
5 companies, private companies. Those companies can issue debt
6 or bonds, but Platinum would not issue debt because the debt
7 has to be securitized. There has to be something to secure it.
8 So when a company issues a bond, what is the security that is
9 protecting that loan that you are making? The investors are
10 buying the bond. And what is the guarantee that they are going
11 to get paid? It's the assets of the underlying company. It's
12 those assets which are protecting the bond's interest. So the
13 company goes out of business, you sell the company, and you pay
14 the bondholders back what they are owed.

15 (Continued on next page)

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MBUCpla4

Post - direct

1 BY MR. GLUCK:

2 Q. You stated that you formed or you analyzed and then formed
3 views on the way in which Platinum Management, the hedge fund
4 manager's PPVA valued PPVA's assets; is that fair?

5 A. Yes.

6 MR. GLUCK: Mr. Parson, would you please call up Joint
7 Exhibit 72.

8 Q. Mr. Post, is Joint Exhibit 72 the deficiency letter you
9 referenced earlier in your remarks?

10 A. Yes, it is.

11 Q. And what did you learn or comprehend from this letter?

12 THE COURT: Are you offering this?

13 MR. GLUCK: It's a stipulated exhibit, your Honor.

14 THE COURT: You still have to offer it.

15 MR. GLUCK: We would offer it into evidence, your
16 Honor.

17 MR. LAUER: No objection.

18 THE COURT: Received.

19 (Joint Trial Exhibit 72 received in evidence)

20 A. This represents an audit that was by the Securities and
21 Exchange Commission. As I mentioned, they did something very
22 similar to what I did when I was running a hedge fund to funds
23 and I was looking at my managers to make sure they were doing
24 things correctly. This memorializes the results of their
25 investigation.

MBUCpla4

Post - direct

1 And there are some interesting, I think, significant
2 issues that are pointed out by the Securities and Exchange
3 Commission in this deficiency letter. Among the things that
4 this letter states is that they didn't think Platinum did a
5 very good job of keeping correspondence. This is important
6 because if you can't find the correspondence that basically
7 tracks what's going on on a day-to-day basis, you really don't
8 know what a company is doing. There is a requirement, it's
9 called a records retention requirement, that the Securities and
10 Exchange Commission makes all companies comply with, which
11 means they have to communicate through authorized communication
12 devices so that there's records, emails have to be retained.
13 All of the important communications internally and externally
14 have to be maintained. This deficiency letter says that
15 Platinum didn't do a good job about that.

16 Another thing that this letter points out is that they
17 require that statements, which show NAV, are produced on a
18 consistent and regular basis, quarterly, and that they are
19 distributed to all the investors. They basically found fault
20 with Platinum for not adhering to those rules. They were late
21 and they often didn't send them out to their investors.

22 MR. GLUCK: Mr. Parson, if you go to the next page as
23 Mr. Post is talking so the jury can see it.

24 THE WITNESS: I think that's the last page. There was
25 21 pages in this letter, so it's rather voluminous.

MBUCpla4

Post - direct

1 Q. If you would, Mr. Post, continue your summary of the
2 deficiency findings.

3 A. I think another very significant finding was that -- this
4 has been talked about. This is, I think, about how you value
5 the assets of Platinum. What they said in this deficiency
6 letter is that there really wasn't a process that they could
7 discern where there was records that were kept about how they
8 actually did their valuations. They typically would have like
9 an agenda of what might be talked about, but they didn't
10 maintain records about the actual discussions and the issues
11 that you would typically see a valuation committee struggling
12 with. So they had no real basis upon which to understand how
13 that valuation process was conducted.

14 And they also felt, I think -- I'm generalizing here.
15 But they also felt from a compliance perspective there was a
16 broad ignoring of the rules that they were supposed to follow.
17 They ignored many, many other areas where they were required to
18 be in compliance, and this letter pointed those issues out and,
19 by the way, demanded that they be corrected.

20 Q. These deficiencies, what problems could they cause in lay
21 terms for a fund like PPVA with respect to the management?

22 A. Well, I mentioned the records retention. If you don't have
23 the records, you don't know what actually was going on. So was
24 that intentionally hiding something or does that make the
25 investigation more difficult, there is a record retention.

MBUCpla4

Post - direct

I think the biggest issue here is valuation. So, the valuation establishes the net asset value. One of the things that the Securities and Exchange Commission is very concerned about is, is a fund entitled to the fees they're taking out of the investors' money. So if the valuation process is flawed, the manager is getting more money than they'd earned and they're taking an incentive fee, which they're not entitled to. So this is a very important point.

And I think one of the most significant things about the deficiency and their failure to adhere to these proper valuation methodologies is that they -- this leads to them possibly taking money in the management fees that they're not entitled to and it possibly allows them to take incentive fees that they're not entitled to take.

Q. Placing yourself in your position of 25 years overseeing hedge funds and hedge fund managers like this, what would your reaction be if one of the funds that you were overseeing received a letter like this?

MR. LAUER: Objection.

THE COURT: Sustained.

MR. GLUCK: Mr. Parson, please call up Plaintiff's Exhibit 760, which we will seek to move into evidence. It is not an objected exhibit.

THE COURT: Any objection?

MR. LAUER: Yes. It's after the relevant period.

MBUCpla4

Post - direct

1 It's April, not March.

2 THE COURT: That's relevant for cross examination, but
3 I think it has potential probative value.

4 MR. GLUCK: For the record, we do not agree that the
5 relevant period as defined by defense counsel is the relevant
6 period. Rather, it is December of 2012 through their final
7 statement.

8 THE COURT: You're saying the date is the date it was
9 compiled.

10 (Plaintiff's Exhibit 760 received in evidence)

11 BY MR. GLUCK:

12 Q. Mr. Post, do you understand what role SS&C played in this
13 case?

14 A. Yes, SS&C is a hedge fund administrator and they're set up
15 to receive investor funds and distributions. They're an
16 administrative organization and they basically provide their
17 third party that helps the hedge fund that doesn't have these
18 administrative capabilities internally to do their job.

19 Q. Were you asked to review, from a birdseye perspective, the
20 financials being prepared by Platinum Management, such as this
21 in this case?

22 A. Yes, I did. I was.

23 Q. What does this document tell you about the value of the
24 assets Platinum Management represented that they were holding?

25 A. Well, this shows their positive assets. We're talking

MBUCpla4

Post - direct

1 about the \$979 million minus their liabilities equals their net
2 asset value. So the net asset value with this statement shows
3 is \$720,648,387. So that \$720 million is the basis upon which
4 they would earn their 2 percent management fee, and if that
5 number had increased or had increased, then they would be
6 entitled to an incentive fee based on the increase between the
7 last balance statement.

8 Q. Have you formed a view as to whether the gross number,
9 \$979 million in this case represented on this sheet was
10 accurate?

11 MR. LAUER: Objection. It's outside the report.

12 MR. GLUCK: Your Honor, it was well within the report.

13 THE COURT: Well, I'm afraid we'll need to have a
14 brief sidebar.

15 (Continued on next page)

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MBUCpla4

Post - direct

1 (At the sidebar)

2 THE COURT: Where is it in the report?

3 MR. GLUCK: I have to find the section. Right here.

4 THE COURT: Let me see.

5 MR. GLUCK: We have a set of excerpts, your Honor.

6 THE COURT: Why isn't that within the scope? Why is
7 it not within the scope of what the report says?

8 MR. LAUER: Okay. Thank you.

9 THE COURT: Objection is overruled.

10 (Continued on next page)

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MBUCpla4

Post - direct

1 (In open court)

2 BY MR. GLUCK:

3 Q. Mr. Post, have you formed a view regarding the accuracy and
4 validity of that gross number, \$979 million, which was
5 represented to be the assets of this fund?

6 A. Yes, I have.

7 Q. What is that view?

8 A. That this is a catastrophic overvaluation of the assets of
9 the Platinum arbitrage fund. This represents that.

10 Q. I'll go through your reasoning in just a moment.

11 Have you also formed a view regarding the liability
12 side listed in the prior page of \$258 million?

13 A. Yes, I have.

14 Q. And what is that view?

15 A. That this also drastically understates liabilities of the
16 company.

17 Q. And we'll go through your reasons for that in a moment.

18 Now, one thing at a time.

19 What is the effect of overstating the gross value of
20 the assets on a hedge fund's NAV?

21 A. The impact is that their Platinum Partners, the fund and
22 the management company, are receiving fees that they're not
23 entitled to. That simple.

24 Q. Similarly, what is the effect of understating the
25 liabilities of a fund like PPVA?

MBUCpla4

Post - direct

1 A. Understating the liabilities overstates the value and also
2 results in a company, in this case Platinum, not being entitled
3 to the management fees that they received.

4 MR. GLUCK: Mr. Parson, would you please call up
5 Plaintiff's Exhibit 761.

6 This is another exhibit to which I understand there is
7 no objection, which we would seek to admit into evidence.

8 THE COURT: Any objection?

9 MR. LAUER: No, your Honor.

10 THE COURT: Received.

11 (Plaintiff's Exhibit 761 received in evidence)

12 Q. Mr. Post, were you asked to prepare an overview analysis of
13 the large position assets and liabilities of PPVA?

14 A. Yes, I reviewed these positions.

15 Q. I'll refer you first to the entity Golden Gate Oil, LLC.
16 Do you see that?

17 A. I do.

18 Q. Can you please tell us what Golden Gate Oil was and how
19 these numbers relate to the value?

20 A. Well, Golden Gate Oil was one of the portfolio companies
21 that I mentioned that Platinum owned and operated. So they
22 didn't actually operate the oil company, but they managed and
23 supervised the operation of that oil company in California
24 related to possible oil drilling activities in the State of
25 California.

MBUCpla4

Post - direct

1 Q. Is it your understanding that at this time in 2016, PPVA
2 held the shares of Golden Gate Oil?

3 A. Yes. So that means that they owned Golden Gate Oil,
4 Platinum. The fund owned Golden Gate Oil.

5 Q. What value is Platinum Management putting on its shares of
6 Golden Gate Oil?

7 A. The market value that they show in this statement is
8 \$122 million and change.

9 Q. Have you reviewed documents that the portfolio company,
10 Golden Gate Oil and Platinum Management concerning Golden Gate
11 Oil's performance from 2012 through 2016?

12 A. I have.

13 Q. And what did you learn from those documents?

14 A. That in April of 2016, this company was basically
15 worthless. They had no operations, they had lost their leases,
16 they had no material business operations. So this number is
17 closer to zero than it is to \$122 million.

18 Q. How did you know that the operations had seized, the leases
19 had been lost, the wells were pumping water, how did you
20 determine that?

21 A. I reviewed correspondence from folks that worked at Golden
22 Gate that were telling Platinum that this was the case, the
23 company had vendor bills that they couldn't pay, they couldn't
24 pay their debt, they couldn't continue to do drilling, the
25 drilling activities had failed, there was no oil. The company

MBUCpla4

Post - direct

1 was virtually out of business.

2 Q. At this time in 2016, did you review any documents which
3 would indicate that Golden Gate Oil owed money or had --

4 A. Yes, in addition to not having any material business
5 operations, they owed a substantial amount of money to bond
6 owners, people that had, in one way or another, lent them money
7 so they could continue their operations.

8 Q. Was there an ability of Golden Gate Oil to even repay those
9 debts based on your understanding of its operations?

10 A. No, there wasn't. So if their business operations were
11 worth zero and had outstanding debt, their actual value was a
12 negative number in the 20 to \$30 million range, I believe.

13 Q. Had you reviewed any documents on the issue of who owned
14 that debt of Golden Gate Oil in 2016?

15 A. I have.

16 Q. What did those documents say?

17 A. Well, there was -- we've talked about this, we can talk
18 about it in some greater detail, but between the Black Elk
19 Opportunities Fund and Beechwood, which were two funds which
20 were set up, which were side funds, during this timeframe,
21 those two entities, in essence, purchased the debt from PPVA.

22 Q. We'll talk about Beechwood in a moment.

23 MR. GLUCK: Mr. Parson, if you wouldn't mind
24 highlighting the Black Elk Energy tab, about five lines down.

25 Q. Mr. Post, do you see the highlighted section, which says

MBUCpla4

Post - direct

1 Black Elk Energy Offshore?

2 A. Yes.

3 Q. You were asked to evaluate PPVA's investment in Black Elk
4 Energy from 2012 to 2016?

5 A. Yes.

6 Q. Can you describe for us first what Black Elk Energy was?

7 A. Well, by 2016 -- I think you have to start back in 2012.

8 Black Elk was an oil drilling business, primarily in the Gulf
9 of Mexico. In 2012, they had an explosion on one of their oil
10 rigs. Sometime after this and before this date, substantially
11 all of the assets of Black Elk were sold in this Renaissance
12 transaction for about \$115 million. This purports to be what's
13 left over as value from that transaction.

14 Q. Are you aware or were you asked to analyze the value of the
15 company, which I'll remind you is Northstar, into which the
16 leftovers of Black Elk Energy were transferred?

17 A. Yes, I did.

18 MR. GLUCK: Mr. Parson, would you please highlight the
19 Lafitte and Northstar lines of this document.

20 Q. Mr. Post, is it your understanding that the Lafitte line
21 item and the Northstar line item refer to PPVA shareholdings in
22 this Northstar company?

23 A. Yes, I understand that.

24 Q. What was Platinum Management valuing PPVA's shares in
25 Northstar at as of 2016 in April?

MBUCpla4

Post - direct

1 A. They were valuing it at approximately \$190 million.

2 Q. Now, I thought that Black Elk had sold the vast majority of
3 its assets in 2014 for \$110 million?

4 A. That's correct. They sold 95 percent of their assets for
5 approximately \$115 million.

6 Q. Are you aware of whether Northstar had any debt on it?

7 A. In addition, they had a substantial amount of debt.

8 Q. So how could it be the case that the shares of Northstar,
9 which owned about 5 percent or 10 percent of the remnants of
10 Black Elk, could be worth \$180 million?

11 A. Well, that's very difficult to come up with this number.

12 Let's just go through that. If they sold Black Elk to
13 Renaissance for -- they sold 95 percent of the assets of
14 Black Elk, the oil company in the Gulf for \$115 million, that
15 means that 5 percent was probably only worth another
16 \$10 million. And those are also assets that Renaissance didn't
17 want to buy. So there is an issue about what that 5 percent
18 was actually worth, but it probably couldn't have been worth
19 more than another 10 or \$15 million. So the fact that two
20 years later when they have no assets and virtually no business
21 operations, this 5 percent is now being valued at \$190 million,
22 is rather extraordinary.

23 MR. GLUCK: Mr. Parson, would you please highlight the
24 line which says China Horizon Ordinary Shares, and you can
25 remove the other highlights.

MBUCpla4

Post - direct

1 Q. Mr. Post, were you asked to analyze, on a high level, the
2 valuation of PPVA's development in a company called China
3 Horizon?

4 A. Yes, I was.

5 Q. What does this statement provide regarding China Horizon's
6 value?

7 A. It says that this company that they --

8 MR. LAUER: Excuse me, Mr. Post.

9 Can we fix the date when he was asked to do these
10 things, because I'm not seeing all these details in his report.

11 MR. GLUCK: Sure.

12 Q. Were you asked at the inception of your work to analyze all
13 of the value of the assets which we're going over now?

14 A. Yes, I was.

15 Q. What does this document tell you that Platinum Management
16 was valuing China Horizon shares at?

17 A. This statement says that those shares were worth
18 \$48 million, almost \$49 million.

19 Q. Have you, in the course of your preparation and research,
20 reviewed emails and correspondence concerning the business
21 status of China Horizon in April of 2016?

22 A. Yes, I did.

23 Q. What did that review reveal?

24 A. Well, it's referenced, China Horizon was attempting to
25 operate these 7-Elevens in China and they needed a license from

MBUCpla4

Post - direct

1 the Chinese government to do so and that license was revoked.

2 So there were no business operations in China.

3 So my conclusion is that it's impossible that that
4 company could have been worth \$48 million if they had no
5 business operations in China because they lack the appropriate
6 licenses to operate there.

7 Q. Now, we've just gone over a number of investments and the
8 total listed is around \$300 million. Would you agree with
9 that?

10 A. Yes, I would agree, that's about \$300 million.

11 Q. Where you've concluded that those valuations were
12 materially inaccurate?

13 A. Yes, that was my conclusion.

14 Q. And materially inaccurate upwards, not downwards; is that
15 accurate?

16 A. Yes, that's correct.

17 Q. Now, I think you stated that PPVA and Platinum Management,
18 they were regulated by the SEC; is that right?

19 A. Yes, they were.

20 Q. Did they also have audit companies auditing their books?

21 A. Yes, they did.

22 Q. Were you asked, as part of your expert work, to try and
23 figure out how an overvaluation like this could be missed for
24 so long by the auditors and the SEC?

25 A. It's something that came to my attention in my review.

MBUCpla4

Post - direct

1 Q. And did the entities, Black Elk Opportunities Fund and
2 Beechwood, form part of your analysis?

3 A. They did.

4 Q. Let's take them one by one.

5 Would you please explain to the jury what the
6 Black Elk Opportunities Fund was and what documents you
7 reviewed concerning it.

8 A. Well, Black Elk Opportunities Fund was a new investment
9 vehicle that the Mark Nordlicht group, which included
10 Mr. Huberfeld and Mr. Bodner, established to raise capital,
11 supposedly to inject money into these businesses to help
12 correct their problems.

13 Q. Based on your review, who owned Black Elk Opportunities
14 Funds management?

15 A. In essence, it was the same ownership as Platinum
16 Management and the Platinum Fund.

17 Q. Was Black Elk Opportunity Fund part of PPVA?

18 A. No, they weren't part of PPVA, but they had the same
19 management team, they operated out of the same offices. So
20 they were similar in almost every respect.

21 Q. Did you form a view on the role that this Black Elk
22 Opportunity Fund played in camouflaging this overvaluation?

23 A. Yeah, this is what I'd call a debt stabilization plan. So
24 my conclusion is that they established the Black Elk
25 Opportunity Fund and Beechwood to artificially prop up the

MBUCpla4

Post - direct

1 value of the debt that these portfolio companies carried.

2 And what does that mean? If you lent money and you
3 were a lender and you realized that people you lent the money
4 to couldn't make the payments, what would you do, you'd
5 foreclose. You can't make your mortgage payments on your
6 house, the bank forecloses. So if the owners of this debt had
7 been real lenders instead of Black Elk Opportunity Fund, they
8 would have foreclosed on this debt because the service couldn't
9 be made either by Platinum or by the actual companies. So
10 Black Elk provided a way to kind of, in essence, authenticate
11 the debt as real and the values by creating this entity that
12 was a related entity.

13 Now, how would I contrast that to what a typical hedge
14 fund might do? If you were a typical hedge fund running a
15 legitimate business operation, you would have gone to third
16 parties who had the money and the desire to invest in your
17 business. You wouldn't set up your own little new fund to kind
18 of obscure the reality and the truth, you would go to third
19 parties. There is many, many companies out there that do
20 distress lending. So would you find an independent company, it
21 would come in and value the assets and review the business
22 operations, and if they like what they saw and they felt there
23 was potential there, they would be willing to give them that
24 money.

25 But I don't believe, based on my analysis, that these

MBUCpla4

Post - direct

1 assets -- that any third party, a legitimate investment
2 business would have been interested in them. They certainly
3 wouldn't have been interested in paying the type of money,
4 paying face value for the debt. So Black Elk Opportunity Fund
5 was set up as a strawman to basically validate fictitious
6 values, and it was controlled by the same folks that ran
7 Platinum.

8 Q. Let's talk about Beechwood.

9 Did you have occasion to review what Beechwood was in
10 the course of your work?

11 A. Beechwood is a similar internally created vehicle that
12 propped up artificial values. In this case, we've heard that
13 it was a reinsurance company. What does that mean? I think
14 you all know a little bit about insurance, but when you pay
15 premiums into an insurance company, they invest the money you
16 give them and they try to make more money so they can pay their
17 obligations based on insurance. So, in essence, Beechwood was
18 an offshore reinsurance company and they collected, oh,
19 somewhere around \$800 million in new investments.

20 They hired a couple of folks, Scott Taylor and Mark
21 Feuer, who were investment professionals. It was owned by the
22 same management team, the Nordlicht group, which was
23 Mark Nordlicht, Mr. Huberfeld, and Mr. Bodner, and of that
24 \$800 million, they were able to take approximately \$80 million
25 and also apply debt, which was virtually worthless, but that

MBUCpla4

Post - direct

1 prevented a foreclosure because now there is a new entity on it
2 and they're all happy with what they think is the ability to
3 get paid.

4 And something else also very curious here is the only
5 reason I think Black Elk Opportunity Fund and Beechwood
6 investors were willing to do this is because there was some
7 guarantees that Platinum made, which said if these underlying
8 entities, the portfolio companies can't make this debt service,
9 Platinum will make those payments. That's also highly unusual.

10 Q. Did Mr. Bodner have a beneficial interest in the Black Elk
11 Opportunity Fund management?

12 A. In other words, was he an owner?

13 Q. Yes.

14 A. Yes, he was.

15 Q. Same question for Beechwood.

16 A. Yes, he was also an owner of Beechwood.

17 Q. In your description of the role that the BEOF fund played,
18 did you summarize certain parts so as to avoid issues regarding
19 the criminal bond subordination that is not part of this trial?

20 A. Yes, I did.

21 Q. Is it a fairly complex story?

22 A. Very complex.

23 Q. Who were the human beings that capitalized the Beechwood
24 Reinsurance Company?

25 A. The Nordlicht group, primarily.

MBUCpla4

Post - direct

1 Q. And you're using the phrase "Nordlicht group." Have you
2 reviewed documents that define this Nordlicht group?

3 A. I have.

4 Q. What is your understanding of who that Nordlicht group was?

5 A. Mark Nordlicht, Mr. Huberfeld, and Mr. Bodner.

6 MR. GLUCK: Mr. Parson, would you please pull up
7 Plaintiff's Exhibit 382.

8 I will note that we are not offering this into
9 evidence, rather this is being displayed so that the fact
10 finder, the jury can see the documents and the information that
11 you were relying on in order to form your opinions.

12 I'll represent to the Court we're certainly going to
13 attempt to admit it, but not in this context.

14 MR. LAUER: I'm not sure I understand it. If he's
15 offering it, we have no objection. If he's not offering it, I
16 don't know what he intends to do with it.

17 THE COURT: I agree. Are you offering it or not?

18 MR. GLUCK: I'm not offering it into evidence.

19 THE COURT: Then I don't think you get to show it to
20 the jury.

21 MR. GLUCK: Then we'll offer it into evidence.

22 THE COURT: It's received.

23 (Plaintiff's Exhibit 382 received in evidence)

24 By the way, in about five minutes, we're going to give
25 the jury their midafternoon break, so find an appropriate spot

MBUCpla4

Post - direct

1 to pause.

2 MR. GLUCK: Yes.

3 BY MR. GLUCK:

4 Q. Mr. Post, in the course of your review of this matter, did
5 you understand who a gentleman named Murray Huberfeld was?

6 A. Yes, Mr. Huberfeld was Mr. Bodner's partner.

7 Q. During the course of your review, did you have an
8 understanding about the manner in which Mr. Bodner sent and
9 received emails during his time at Platinum?

10 A. Yes, I came to a conclusion about that.

11 MR. GLUCK: Mr. Parson, would you please highlight the
12 "to" line which says Angela Albanese?

13 Q. What is your understanding regarding the role of Ms. Angela
14 Albanese in relation to correspondence of David Bodner?

15 A. Well, I'm not sure this email says this, but I know there's
16 an email that exists where someone asks what's Mr. Bodner's
17 email address.

18 MR. LAUER: Your Honor, can we have an answer to the
19 question.

20 THE COURT: I think that's fair.

21 A. My understanding is that Ms. Albanese received -- that she
22 was Mr. Bodner's email address. So in other words, anything
23 that was sent to Mr. Bodner was sent to her.

24 MR. GLUCK: Mr. Parson, you can reduce the zoom.

25 Q. If you look down on the page where it says outline of

MBUCpla4

Post - direct

1 terms. Do you see that?

2 A. Yes, I see that.

3 Q. Is this the basis of your understanding or your testimony
4 just now that the Nordlicht group, as you called it, formed and
5 capitalized Beechwood?

6 A. Yes, this is how Beechwood was capitalized by Mr. Bodner,
7 Mr. Huberfeld, and Mr. Nordlicht.

8 Q. Excuse me, I misspoke. Is this one of the documents, not
9 the document?

10 A. Yes.

11 Q. Would you mind running through at least what your
12 understanding of these terms is.

13 A. At the bottom of this email?

14 Q. Yes, the highlighted portion, highlighted terms 1
15 through 8.

16 A. Well, from my review of the documents, the Nordlicht group
17 put in the capital to secure the funds, meaning they had to
18 make an investment, and I believe they used their limited
19 partnership interest to fund this new business. And this talks
20 about what they were entitled to receive.

21 A preferred return is something that a preferred
22 shareholder would get. If you're a common shareholder, you
23 might not get anything unless you sold your shares, but if
24 you're a preferred shareholder, you're entitled to either
25 sometimes the gain in the value or actually like an 8 percent

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Post - direct

1 or some number, a return on your investment that you get
2 automatically. So it's a combination between being an owner
3 and also being a lender, but you're getting a guaranteed
4 preferred return in front of everybody else. So preferred
5 returns have to be paid before other investors get paid. So
6 they put themselves into a preferred position.

7 The next line, they were paid before there was any
8 profit split. The Feuer group were Mark Feuer and Scott Taylor
9 who were the two investment professionals who were involved in
10 the Beechwood investment. Mark Feuer was an investment
11 professional, so he would run the insurance side of it and
12 Mr. Nordlicht would run the investment side of it.

13 Q. Is it your understanding that Mr. Bodner was a member of
14 the Nordlicht group?

15 A. Yes, Mr. Bodner was a member of the Nordlicht group.

16 Q. And have you reviewed documents indicating that Mr. Bodner,
17 through various entities and trusts, owned the Beechwood
18 entities?

19 A. Yes.

20 MR. GLUCK: Mr. Parson, would you please call up
21 Plaintiff's Exhibit 384. We'll seek to bring into evidence.

22 Q. Mr. Post, in the beginning of Beechwood's formation, you
23 aware are of whether they had their own offices?

24 A. I am aware of the office situation when they formed the
25 company.

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Post - direct

1 Q. And what was that situation?

2 A. Beechwood was formed out of the Platinum offices, Platinum
3 Management and the hedge fund. They used the same offices.

4 Q. Did you form a view in your reports and your testimony here
5 today as to Mr. Bodner's role in directing Beechwood's
6 investments into the PPVA debt?

7 A. Yes.

8 Q. What was that view?

9 A. Well, broadly speaking, Mr. Bodner came to the offices four
10 to five times a week from 2003 all the way through this
11 timeframe. So he was at the office every day. There were two
12 floors in the Platinum Management complex, one was more
13 administrative, but the top floor were the professionals, the
14 managers, the investment managers and the people who ran the
15 business. Mr. Bodner had an office there for that entire
16 timeframe when all these business activities were going on,
17 including the formation of Beechwood and the formation of
18 Black Elk Opportunity Fund. They were all done on that same
19 floor in the same office.

20 Q. Beechwood was a reinsurance company; is that right?

21 A. Correct.

22 Q. It would have clients that were insurance companies that
23 would hand over their money for investments in appropriate
24 ways?

25 A. Yes.

MBUCpla4

Post - direct

1 Q. Do you see where on the first line it says CNO?

2 A. Yes.

3 Q. What do you understand CNO to be?

4 A. An insurance organization.

5 Q. What do you understand the whole phrase, he's here now,
6 Scott taking Murray and Mr. Bodner through the CNO limits now
7 in Feuer's office?

8 A. Well, as I mentioned, they raised approximately
9 \$800 million, but they were having a discussion about what
10 percentage of the \$800 million could be invested in something
11 that was risky.

12 MR. LAUER: Excuse me. Your Honor, we object to this.
13 He wasn't there.

14 MR. GLUCK: Your Honor, may I answer the objection?

15 THE COURT: Well, I think this is probably a good
16 place to give the jury their midafternoon break and I'll hear
17 further argument on it outside their presence.

18 So I'll give you a 15-minute break at this time.

19 (Continued on next page)

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Post - direct

1 (Jury not present)

2 THE COURT: So the objection was, in effect, hearsay.

3 The so the question was what do you understand the whole
4 phrase, he's here now, Scott taking Murray and Mr. Bodner
5 through the limits now in Feuer's office. He just asked for
6 the private deal summary, as well. And the question was what
7 do you understand that to mean. The objection was that the
8 witness wasn't there. But that doesn't mean that he doesn't
9 have an understanding based on his review of the documents.
10 What I'm wondering is how this fits within his expertise. I'm
11 asking plaintiffs' counsel.

12 MR. GLUCK: Setting aside the specific wording of the
13 question, the reason I believe it falls within his expertise is
14 that Mr. Post was asked as an expert in how hedge funds and
15 businesses like Beechwood are running actuality, not just on
16 the documents, but how they're running actuality.

17 Therefore, in this context of Beechwood acquiring the
18 debt of the Platinum portfolio operating companies, this is a
19 piece of evidence that he's reviewed that goes to this issue of
20 a plan to acquire the debt and otherwise use the Beechwood
21 money to invest in Platinum. It was not, by the way, and to
22 the extent this is relevant, intended for the truth that David
23 Bodner was there. It is rather about this investment concept.

24 THE COURT: Yes.

25 MR. LAUER: Your Honor, two of the individuals are on

MBUCpla4

Post - direct

1 their witness list. If the Court is interested in having the
2 jury or they're interested in having the jury understand what
3 took place at this meeting, they can ask Mr. Taylor, they can
4 ask Mr. Huberfeld.

5 You may remember that when we made the *Daubert*, we
6 basically said that, with all due respect to Mr. Post, he's
7 really being asked to testify as a spokesman for Mr. Gluck.
8 He's not offering any real expertise, he's simply interpreting
9 documents the way a lawyer would interpret documents.

10 We thought, if you look at his report when there were
11 more defendants in this case, he was focused on systems,
12 controls, and criticizing those aspects. Right now, we're
13 dealing with a very narrow valuation case and a claim that
14 Bodner knew the valuations were off. I mean, there was a lot
15 of leeway granted here --

16 THE COURT: Well, I'm glad to hear from you that we're
17 now dealing with a very narrow case because now I know that
18 your case will be even shorter than I was worried about this
19 morning. Nevertheless, your objection is sustained.

20 MR. GLUCK: Your Honor, thank you. May I respond just
21 very briefly?

22 THE COURT: You can respond, but I've ruled and my
23 practice is not to have endless discussions after I've ruled.
24 I'll give you one exception in this case, this will be an
25 exception.

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Post - direct

1 MR. GLUCK: To the extent there are similar topics as
2 part of this presentation, it is my understanding that
3 Mr. Bodner's defense here is that because the auditors of the
4 SEC didn't pick this up, how could he have? Our response is
5 that this is how this, the transfer of assets and debt to
6 Beechwood is how it would be conceived and therefore falls
7 directly within Mr. Post's job and to explain, all right, was
8 there an overvaluation, okay, but how did it happen, and that
9 is the intent of this line of testimony. This is just one
10 document we were trying to use to make --

11 THE COURT: I'm not ruling on anything else. I'm
12 ruling on the specific question, which is this is from Mr. Fife
13 to Naftali, Mr. Bodner is nowhere copied here. And it is in
14 response to the Naftali, Manela's question, let's see when he's
15 coming over, I'll look to 2:30 today, when is Puerto Rico
16 closing. The response was he's here now.

17 I'll stop there. That has zero evidence of relevance.

18 Scott taking Murray -- "taking," by the way, is
19 capitalized improperly, but that was Mr. Fife's problem. Scott
20 taking Murray and Mr. Bodner for the CNO limits now in Feuer's
21 office. That clearly is at least single hearsay and probably
22 double hearsay, and the fact that an expert can look at hearsay
23 doesn't mean that he's just free to opine on someone else's,
24 oh, I saw Jones murder Smith and the expert says that shows
25 that he had criminal intent. That would never be admissible.

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Post - direct

1 Scott taking Murray and Bodner through the CNO limits
2 now in Feuer's office. He just asked for the private deal
3 summary, as well. This all sounds to me like probably double
4 hearsay, but at least single hearsay of the description of some
5 physical activity or verbal activity that's not specified of
6 very general terms, as to which as I understand from defense
7 counsel, you will be calling two people with actual knowledge.

8 MR. GLUCK: Yes.

9 THE COURT: The objection is sustained. We'll see you
10 in 10 minutes.

11 I'm sorry. Let me hand out to both counsel my craft
12 of the preliminary instructions to give to the jury tomorrow.
13 As mentioned earlier, tonight you'll send my law clerk any
14 suggestions or additions or objections.

15 (Continued on next page)

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1 (Jury not present)

2 THE DEPUTY CLERK: May I bring in the jury?

3 THE COURT: Please, and let's get the witness back on
4 the stand.

5 Please be seated.

6 Just while we are waiting for the jury, tomorrow we
7 will start with the jury at 9:30, but we will start with you
8 guys at 9:15 to take any comments you have on the preliminary
9 instructions.

10 (Continued on next page)

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Post - Direct

1 (Jury present)

2 THE COURT: All right, counsel.

3 BY MR. GLUCK:

4 Q. Mr. Post, welcome back.

5 Were you asked to analyze the issue of common control
6 between Platinum Management and Beechwood?

7 A. Yes, I was.

8 Q. Did you form any views on whether there was in fact some
9 common control between Platinum and Beechwood?

10 A. Yes, I did.

11 Q. How did you form that view?

12 A. Well, I analyzed documents and records and deposition
13 testimony which provided a basis upon which I made my --
14 reached my conclusions.

15 Q. Mr. Parson, would you please call up Plaintiffs' Exhibit
16 388, please.

17 MR. HERTZBERG: Your Honor, I'm told that that TV
18 shows what the jury is seeing. This is not a document that's
19 been offered or admitted.

20 THE COURT: I'm sorry. There shouldn't be anything on
21 the screen right now.

22 MR. HERTZBERG: That's right. Thank you, Judge.

23 THE COURT: Are you offering 388?

24 MR. GLUCK: Yes, I am offering it into evidence and
25 will be asking whether it was one of --

Mbu2Pla5

Post - Direct

1 THE COURT: Any objection?

2 MR. LAUER: We are not on it. Hearsay.

3 MR. GLUCK: Your Honor, a response to the hearsay
4 objection would be coconspirator, and this is in furtherance.

5 THE COURT: Hold on. Let me just read this. Sorry.

6 Overruled. Received.

7 (Plaintiffs' Exhibit 388 received in evidence)

8 BY MR. GLUCK:

9 Q. Mr. Post, the document in front of you, Exhibit 388, is
10 this one of the documents you looked at in forming your view as
11 to commonality of control and management between Platinum and
12 Beechwood?

13 A. Yes, it is.

14 Q. Are there other documents that you reviewed that also
15 form -- led you to this conclusion?

16 A. Yes.

17 Q. I would like you to, for a moment—because it's a difficult
18 concept—describe once again your views regarding what you
19 called the debt stability scheme. Would you mind repeating
20 that for us?

21 A. The debt stability scheme is that if the owners of the
22 debt -- an owner of the debt was a legitimate creditor, if you
23 weren't getting your payments on time or you were worried that
24 they weren't going to be made, then your option would be to
25 foreclose. That's what a lender does. But if you transfer

Mbu2Pla5

Post - Direct

1 that debt to a friendly party, which we have talked about
2 Black Elk Opportunity Fund and Beechwood, those parties are not
3 going to react in a normal way. They are not going to insist
4 on foreclosure because they are all part of the same group. So
5 it was an artificial way to prevent foreclosure when you have
6 nonperforming assets.

7 Under a normal situation, a lender would look at the
8 fact that Black Elk -- the oil business was not operating
9 anywhere near, had debt. Same with Golden Gate. So those
10 loans would have been in jeopardy, they would have been
11 distressed, and a legitimate third-party lender would have
12 foreclosed. But when you created Beechwood and Black Elk
13 Opportunity Fund, you have a created, in essence, a straw man
14 that basically protected those misvaluations.

15 Q. Thank you.

16 Do you recall at the beginning of this testimony we
17 went through that 2016 NAV statement where it appeared there
18 was about 300 million overvalued and I asked you whether you
19 were tasked with figuring out how something this big could have
20 been missed. Do you recall that?

21 A. I do.

22 Q. Is the debt stability scheme one of your answers as to how
23 this could have happened?

24 A. Yes. This was a way of hiding the distressed nature of the
25 debt from the auditors.

Mbu2Pla5

Post - Direct

1 Q. Are you aware of any specific evidence to suggest that
2 these portfolio companies—Golden Gate or Northstar—were
3 unable to service this debt that Beechwood was holding?

4 A. Yes. There were -- I have read correspondence, e-mail
5 correspondence, that indicated that was in fact the case they
6 could make debt service but the unusual requirement was that
7 Platinum, the fund, guaranteed these payments, which in essence
8 is a liability. It was not also recorded. If Platinum, the
9 fund, guaranteed interest payments that were owed by their
10 portfolio company, that's a liability on the fund and it should
11 have been reflected.

12 Q. Mr. Parson, could you please call up Plaintiffs' Exhibit
13 459, please.

14 And I will ask you, Mr. Post, whether this is the sort
15 of evidence that you would look at to determine whether it was
16 Platinum actually making these interest payments on the debt
17 stability scheme.

18 A. Yes, and I note that this is from Mr. Huberfeld to Angela,
19 so this is in essence an e-mail from Mr. Huberfeld to
20 Mr. Bodner, and this is something I relied on that indicated
21 that these interest payments were being made not by the
22 portfolio companies or not able to be made by the portfolio
23 companies.

24 MR. LAUER: Your Honor, we -- we will deal with this
25 after. It's all right.

Mbu2Pla5

Post - Direct

1 THE COURT: All right.

2 Q. Thank you.

3 Did there come a time when even Platinum, PPVA, the
4 fund, had trouble making these interest payments?

5 A. Yes.

6 Q. Mr. Parson, would you please call up Exhibit 562.

7 And my question for you, Mr. Post, will be whether
8 this is one of the exhibits -- I'm sorry. I forgot to move 459
9 into evidence.

10 MR. LAUER: We object to it. It never went to
11 Mr. Bodner.

12 MR. GLUCK: Coconspirator, furtherance of the
13 conspiracy, specifically the debt stability scheme.

14 MR. LAUER: I'm not going to argue in front of the
15 Court.

16 THE COURT: If you want a sidebar, I will hear you,
17 but otherwise I overrule the objection.

18 Do you want a sidebar.

19 MR. LAUER: Do you want us to come up?

20 THE COURT: Yes, come up.

21 Ladies and gentlemen, I should explain to you why we
22 have sidebars and we will try to keep it to a minimum. It is
23 so that I can hear about stuff that you haven't heard yet which
24 may be admissible or may be not admissible. And if it turns
25 out not to be admissible, then you shouldn't be hearing it. So

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Post - Direct

1 I hear at the sidebar what some future testimony is going to be
2 in this case, and then I decide whether it is admissible or
3 not. So the great advantage of the sidebar is you can sit
4 there and twiddle your thumbs. But, in any event, we will try
5 to keep them to a minimum.

6 (Continued on next page)

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1 (At the sidebar)

2 MR. LAUER: Your Honor, Angela Albanese testified that
3 she does not give everything she gets to Mr. Bodner. She
4 mostly gives --

5 THE COURT: No, no, but that doesn't matter. This is
6 not being offered for Mr. Bodner's knowledge *per se*. This is
7 being offered to establish the conspiracy, and this is a
8 statement of a coconspirator in furtherance of the conspiracy.
9 And the law of conspiracy is that a coconspirator doesn't have
10 to know everything that was said by every other coconspirator
11 in furtherance of the conspiracy. So in order to establish a
12 conspiracy, they have to establish both the fact of the
13 conspiracy and then also ultimately Mr. Bodner's membership in
14 that conspiracy, but this is offered on the first prong. It's
15 overruled.

16 (Continued on next page)

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Post - Direct

1 (In open court)

2 (Plaintiffs' Exhibit 459 received in evidence)

3 BY MR. GLUCK:

4 Q. So we moved to put Exhibit 459 into evidence, and
5 Mr. Parson -- I'm sorry. Let me restart.

6 Mr. Post, did there come a time when you reviewed
7 documents, correspondence indicating that even Platinum began
8 having trouble making the interest payments that were owed by
9 these portfolio companies?

10 A. Yes.

11 Q. Mr. Parson, can you please call up Plaintiffs' Exhibit 562,
12 which is offered into evidence under the same basis.

13 Now first, Mr. Post, could you please remind the jury
14 who CNO is in relation to Beechwood.

15 A. CNO was an investor, but they happened to be an insurance
16 company.

17 Q. Is this one of the documents that you reviewed to form the
18 conclusion that Platinum began having trouble making the
19 interest payments on behalf of entities like Northstar pursuant
20 to your debt stability scheme hypothesis?

21 A. Yes.

22 Q. In relation to your task of evaluating who was actually in
23 charge at Platinum Management, what documents -- what sorts of
24 documents would you review and would similar experts review?

25 A. Well, this is what I have done professionally as an expert

Mbu2Pla5

Post - Direct

1 witness. I look at how a business operates and I basically
2 can -- on my experience and my expertise, I can, in essence,
3 reach a conclusion about whether someone is a passive investor
4 or an active investor or not involved in management or involved
5 in management.

6 So, many of the things that I reviewed in this case,
7 for example, this e-mail, helped me to figure out whether an
8 investor is passive or active. If the investor is active, then
9 they look more like a member of the management team. And if
10 they are a part of the management team, then that triggers
11 their fiduciary duties to the investors. So I look at a
12 multitude of facts and circumstances. I have talked about a
13 few of them, like the fact that Mr. Bodner was in the office,
14 the fact that they are going to Mr. Bodner, Mr. Huberfeld, held
15 on operational and financial issues related to the business.
16 That sounds more like an active manager than a passive
17 investor, and I can talk more about passive investors and what
18 they might look like.

19 Q. Let's stick with this issue that on the one hand these
20 companies that are being valued at hundreds of millions of
21 dollars like Golden Gate and Northstar can't even make their
22 own interest payments. Did you review specific documents that,
23 by 2016, when you saw that NAV statement, these sorts of
24 entities, Northstar, Golden Gate, were defunct or on their way
25 to becoming defunct?

Mbu2Pla5

Post - Direct

1 A. Yes, I did.

2 Q. Mr. Parson, would you please call up Plaintiffs' Exhibit
3 563.

4 (Court and court reporter confer)

5 THE COURT: 562 is received.

6 (Plaintiffs' Exhibit 562 received in evidence)

7 MR. GLUCK: Move to admit 563 into evidence on the
8 same grounds as before, in furtherance of the conspiracy, debt
9 stability scheme.

10 MR. LAUER: Objection.

11 THE COURT: So I'm going to receive it, but I thought
12 the overall basis for offering this was, in addition to their
13 independent admissibility in furtherance of the conspiracy,
14 that this was stuff that he relied on in reaching a conclusion.
15 I don't think that opens the door to going through thousands of
16 documents.

17 MR. GLUCK: Understood.

18 THE COURT: Maybe this will be the last.

19 MR. GLUCK: Very tight.

20 (Plaintiffs' Exhibit 563 received in evidence)

21 BY MR. GLUCK:

22 Q. Is this the sort of document that you would look to and
23 rely on regarding the actual operations of companies like
24 Golden Gate and Northstar?

25 A. Yes. This is a document which discusses financial issues

Mbu2Pla5

Post - Direct

1 at Golden Gate and at Beechwood. And so in reviewing this
2 document, I concluded that this demonstrates that there were --

3 MR. LAUER: We are objecting to the document.

4 THE COURT: No, no. I overruled the objection.

5 MR. LAUER: Sorry.

6 A. To me this demonstrates that there were cash problems,
7 operational funding problems, by both of these portfolio
8 companies, where they couldn't pay vendors and didn't have the
9 sufficient funds to pay interest payments and operate their
10 businesses.

11 THE COURT: Just so the record is clear for our
12 reporter the document was received.

13 MR. GLUCK: This will be the last one in this vein.

14 Q. And did you in fact review any documents where Mr. Mark
15 Nordlicht directed the shutdown of the unprofitable fields at
16 Golden Gate and Northstar?

17 A. Yes. I found the document in the record that was a
18 specific instruction by Mr. Nordlicht to shut down the
19 Golden Gate Oil nonperforming wells.

20 MR. GLUCK: As I said, this is the last one in this
21 vein.

22 Mr. Parson, could you please pull up Plaintiffs'
23 Exhibit 564. We seek to admit 564 on the same basis, and in
24 particular in relation to the testimony of Mr. Post that
25 Platinum knew in 2015 that these entities were defunct, they

Mbu2Pla5

Post - Direct

1 were valuing them as though they were not in April of 2016.

2 A. Is that a question?

3 Q. No. That's my basis for offering it into evidence. I will
4 ask you a question about it in a second.

5 THE COURT: Any objection?

6 MR. LAUER: We object.

7 THE COURT: The same objection previously made and the
8 same ruling. The objection is overruled. Received.

9 (Plaintiffs' Exhibit 564 received in evidence)

10 BY MR. GLUCK:

11 Q. In your role overseeing hedge fund managers, what do you
12 infer from this document regarding the viability of Golden Gate
13 and Northstar and the valuation being placed on shares of
14 Golden Gate and Northstar by Platinum?

15 A. Well, if I'm trying to determine whether values are
16 overstated on the balance sheet, which was April of 2016, this
17 would be very informative. This would show me that there were
18 significant and serious operational issues that if I was
19 valuing an asset, I would want to take into consideration in
20 making that valuation, and my conclusions in reviewing the
21 facts and the record are that this document is indicia or an
22 indication that Golden Gate Oil was an unprofitable business,
23 not operating, couldn't pay its debts, and therefore the
24 valuation that was reflected on the balance sheet cannot be
25 accurate and is most likely false.

Mbu2Pla5

Post - Direct

1 Q. Mr. Post, in the course of your review -- and that's your
2 view of this particular e-mail. In the course of your review,
3 did you come across any documents or correspondence which
4 showed that Platinum Management itself knew that these assets
5 had a zero or near zero value prior to issuing that NAV
6 statement?

7 A. Yes.

8 Q. Mr. Parson, could you please call up Plaintiffs' Exhibit
9 592. Is this one of --

10 MR. GLUCK: I move 592 into evidence, please.

11 MR. LAUER: Same objection.

12 THE COURT: Same ruling. Received.

13 (Plaintiffs' Exhibit 592 received in evidence)

14 BY MR. GLUCK:

15 Q. First of all, do you have an understanding of who Mr. David
16 Steinberg is?

17 A. Yes, I do.

18 Q. Who?

19 A. He is the chief risk officer.

20 Q. And who is Naftali Manela?

21 A. Portfolio manager at Platinum.

22 Q. Is it possible he was the CFO?

23 A. Yes, excuse me.

24 Q. Do you see what the subject line is?

25 A. Yes.

Mbu2Pla5

Post - Direct

1 Q. Attached to this document are three Excel spreadsheets,
2 right?

3 A. Yes.

4 Q. And Mr. Steinberg is saying: Look at these Excel
5 spreadsheets in order. They tell a story. Do you see that?

6 A. Yes.

7 Q. Have you reviewed these three spreadsheets?

8 A. I have.

9 Q. What story are they telling?

10 A. They are telling that there is a massive problem with many
11 of the portfolio companies of Platinum, that they are not
12 operating profitably, they are losing money, and that they are
13 on the verge of complete collapse.

14 Q. I will ask you to highlight the bottom portion first, if
15 you wouldn't mind, instead of the top.

16 Mr. Post, do you recall when I asked you about what
17 the effect of undisclosed liabilities would be on PPVA's net
18 asset value?

19 A. Yes.

20 Q. Have you reviewed PPVA's liabilities as set forth in that
21 2016 NAV statement?

22 A. I did.

23 Q. Are Northstar debts listed in that statement?

24 A. No.

25 Q. How about Golden Gate debt? Is that listed in the

Mbu2Pla5

Post - Direct

1 statement?

2 A. No.

3 Q. Thank you, Mr. Parson. If you wouldn't mind shutting that
4 window.

5 Can you please go to the next Excel spreadsheet? If
6 you wouldn't mind flipping it.

7 Mr. Post, would you please take us through what this
8 Excel sheet is stating.

9 A. This is a list of the portfolio companies, and it shows the
10 amount of encumbrances, or debt, and values.

11 Q. That number on the right "unencumbered," what is
12 "unencumbered"?

13 A. That there is no associated debt.

14 Q. So, Mr. Steinberg -- well, let me ask this: What is
15 Mr. Steinberg saying about what the real value of these assets
16 were?

17 A. I think he referred to it as it was almost certainly going
18 to end up in a bankruptcy.

19 Q. The NAV was listed at nearly 900 million in April. Excuse
20 me. The gross asset value was listed at nearly 900 million in
21 April here, 1048, but the unencumbered value is listing at only
22 333 million. Do you see that?

23 A. I do.

24 Q. What proportion of the value of PPVA is missing?

25 A. That's -- it's almost \$400 million.

Mbu2Pla5

Post - Direct

1 Q. And this is an e-mail from the chief risk officer of
2 Platinum Management to the CFO of Platinum Management in
3 January?

4 A. Correct.

5 Q. But in April they are still listing a NAV of more than 700
6 million.

7 A. That's correct.

8 Q. What is your conclusion as to whether, irrespective of
9 whether your interpretation of those e-mails about problems at
10 the operating company is right, whether Platinum Management
11 knew the value of the company?

12 MR. LAUER: Objection. State of mind. It's excluded
13 in the *Daubert*.

14 MR. GLUCK: The witness is an expert.

15 THE COURT: No, no. Well, lucky me, I'm going to have
16 another sidebar.

17 (Continued on next page)

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Post - Direct

1 (At the sidebar)

2 THE COURT: So I did not understand plaintiffs'
3 counsel's response to defense counsel's objection. Defense
4 counsel's objection was that this was not within what the Court
5 permitted after its *Daubert* hearing and plaintiffs' counsel
6 said he is an expert. That's a *non sequitur*.

7 MR. GLUCK: He made an objection on state of mind. My
8 response is that he is not testifying as to an individual's
9 state of mind, but rather the organization Platinum
10 Management's knowledge.

11 THE COURT: And since when does an organization have a
12 state of mind.

13 MR. GLUCK: They have knowledge.

14 THE COURT: That's -- I don't think that's within what
15 I permitted, and I don't think it is what the rules of evidence
16 permit either, so the objection is sustained.

17 MR. LAUER: Thank you.

18 (Continued on next page)

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Mbu2Pla5

Post - Direct

1 (In open court)

2 MR. GLUCK: The question is withdrawn.

3 THE COURT: But only after I overruled counsel asking
4 the question. Go ahead.

5 BY MR. GLUCK:

6 Q. Mr. Post, was this one of the documents you relied upon to
7 form your conclusion that there was a catastrophic
8 overvaluation of PPVA?

9 A. Yes I relied on this document to reach my conclusion.

10 Q. Mr. Post, were you also asked to evaluate the internal
11 management structure of Platinum Management?

12 A. Yes, I was.

13 Q. Mr. Bodner does not appear on Platinum Management SEC
14 registration documents. Is that right?

15 A. That's correct.

16 Q. He does not appear on the fund's prospectus, is that right?

17 A. That's correct.

18 Q. On what basis do you state or what is the basis for your
19 conclusion that Mr. Bodner was in fact a senior partner, an
20 involved senior partner at Platinum Management?

21 A. Well, I mentioned this previously, but I would look at how
22 they actually operated the business and what was Mr. Bodner's
23 involvement in this. And so we heard and I have heard today
24 that this was a major investment for him; that he went into the
25 offices almost every day of the week for 15 years.

Mbu2Pla5

Post - Direct

1 But it's highly unusual that one investor would have
2 access to this inside information. Once you enter that tent,
3 so to speak, of knowledge you are no longer just an investor.
4 You are part of the management team.

5 And even if you are not running the day-to-day
6 operations, I have read and reviewed e-mails which said that --
7 from people that work there, that they referred to
8 Mr. Huberfeld and Mr. Bodner as the senior partners, as the
9 ones that made the ultimate decisions on major issues. That's
10 fairly typical of the way investment organization works. You
11 have got people that run the business and then you have people
12 that have the authority to actually make major decisions. And
13 my review of the documents are that Mr. Bodner and
14 Mr. Huberfeld were the senior partners, made the major
15 decisions.

16 Mr. Nordlicht ran the business on a day-to-day basis.
17 But once you are at the company's offices, once you get an
18 e-mail account, you then cross that line. The fact that,
19 again, in my review is that Angela was Mr. Bodner's assistant,
20 and if an e-mail was sent to her, then my conclusion is that it
21 is -- that's part of a methodology of conducting business. And
22 so that changes someone's status from just being an investor to
23 actually being part of the management team.

24 And you don't have to have many points, or what we
25 call indicia, that point to whether a person is a manager or

Mbu2Pla5

Post - Direct

1 not. If you only had one of those that you could make major
2 decisions, stock, for example, distributions, that one decision
3 puts you into management because no other investors had that
4 power or authority. No other investors who weren't part of
5 management were in their offices on a daily basis participating
6 in partnership meetings, participating in a whole variety of
7 other activities.

8 So it's not volume, it is the quality and the types of
9 decisions that Mr. Bodner and Mr. Huberfeld had the authority
10 to make, and my review of the documents are that they were
11 involved in the activities, making significant decisions for
12 the organization, and they did that for quite a continuous
13 period of time.

14 MR. LAUER: Your Honor, we would ask that that be
15 stricken. He was asked the question what facts and what we had
16 was a generalized answer.

17 THE COURT: So I was waiting for you to make a similar
18 objection, but you allowed him to go on at great length before
19 you objected, and I consider that a waiver.

20 Overruled.

21 BY MR. GLUCK:

22 Q. Let me ask specifically, you mentioned partner meetings
23 because I do want to get to the facts. Did you review
24 documents which indicate that Mr. Bodner participated in
25 Platinum Management partner meetings with Mr. Huberfeld,

Mbu2Pla5

Post - Direct

1 Mr. Nordlicht, and Mr. Fuchs?

2 A. Yes, I did.

3 Q. Were those documents in the form of calendar invites?

4 A. Yes, they were.

5 Q. Were these meetings described in deposition transcripts?

6 MR. LAUER: I object. His report says he read only
7 one deposition, and he has not filed a supplemental report. I
8 think at this point forward we are entitled to facts.

9 MR. GLUCK: Your Honor, he filed this report in --

10 THE COURT: Excuse me. The objection is sustained,
11 but I think counsel for both sides need to have less in the way
12 of speaking objections. So from now on I will ask counsel to
13 say at most, when making objection, three words: "objection"
14 and then either you can state one word like "hearsay" or
15 "foundation" or "nonresponsive," or you can cite a rule, like
16 "Rule 403," and then plaintiffs' counsel in response can say
17 something like "coconspirator" or some other word or two, but
18 that's all.

19 Also, I'm going to ask the witness to confine yourself
20 to answering just the question asked.

21 Go ahead, counsel.

22 BY MR. GLUCK:

23 Q. It was a compound question, so let me ask it one at a time.

24 Mr. Post, did you review documents in the form of
25 calendar invites indicating that Mr. Bodner attended

Mbu2Pla5

Post - Direct

1 partnership meetings with Mr. Nordlicht, Mr. Huberfeld, and at
2 times Mr. Fuchs?

3 A. Yes, I did.

4 Q. And how often would those partnership meetings occur
5 according to the calendar invites?

6 MR. LAUER: Hearsay. No basis. He doesn't know.

7 THE COURT: Overruled.

8 A. On a regular basis; quarterly, if not more frequently.

9 Q. Mr. Post, did you review any deposition testimony?

10 A. Yes.

11 THE COURT: How many depositions did you review?

12 THE WITNESS: I don't recall.

13 THE COURT: Well, there was an assertion made a minute
14 ago that it was perhaps just one. Is that right?

15 THE WITNESS: That could be correct, your Honor.

16 THE COURT: All right.

17 BY MR. GLUCK:

18 Q. Mr. Post, are you distinguishing between deposition
19 testimony that you read in advance of submitting your report in
20 2019 as opposed to depositions that you may have read in
21 general and after that date?

22 THE COURT: No, he can't rely on depositions he has
23 read thereafter.

24 BY MR. GLUCK:

25 Q. But were you making that distinction?

Mbu2Pla5

Post - Direct

1 A. Yes.

2 THE COURT: In any event, put another question,
3 counsel.

4 BY MR. GLUCK:

5 Q. Did you review the deposition testimony of Mr. Michael
6 Katz?

7 A. Yes.

8 THE COURT: The question is was that before or after
9 you issued your report?

10 THE WITNESS: I don't have the time frame in my mind.

11 MR. LAUER: May I approach the bench?

12 THE COURT: Yes.

13 (Continued on next page)

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Mbu2Pla5

Post - Direct

1 (At the sidebar)

2 MR. LAUER: I am handing the Court his report and he
3 lists only one deposition.

4 THE COURT: Which is?

5 MR. LAUER: Bernard Fuchs, who will be testifying.

6 THE COURT: That's neither here nor there.

7 MR. LAUER: He only reviewed one deposition.

8 THE COURT: He admitted a minute ago that it could be
9 only one, and now if you want to both stipulate that it's just
10 one and it's Mr. Fuchs, I will be happy to let you so
11 stipulate. Do you so stipulate?

12 MR. GLUCK: I stipulate that he reviewed Mr. Fuchs
13 prior to the submission of the report.

14 THE COURT: All right. Very good. I will inform the
15 jury.

16 (Continued on next page)

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Mbu2Pla5

Post - Direct

1 (In open court)

2 THE COURT: So ladies and gentlemen, there are three
3 types of evidence. There is testimony, there are exhibits, and
4 there is something called a stipulation, where the parties
5 agree on something, and you can consider a stipulation as a
6 fact that both parties agree on, and therefore you can take it
7 into account. So the parties at the sidebar have just
8 stipulated that this witness only reviewed one deposition
9 before he issued his report and that was the deposition of
10 Mr. Fuchs.

11 Go ahead.

12 MR. GLUCK: I misspoke.

13 THE COURT: That's all right.

14 BY MR. GLUCK:

15 Q. Mr. Post, did you review the deposition of Mr. Fuchs prior
16 to the submission of your --

17 A. Yes, I did.

18 Q. -- report?

19 In that deposition did Mr. Fuchs describe Mr. Bodner's
20 role?

21 A. He did.

22 Q. Did he describe Mr. Bodner's participation in partner
23 meetings in which Mr. Fuchs attended?

24 A. Yes, he did.

25 Q. Did Mr. Fuchs describe an episode at one of these partner

Mbu2Pla5

Post - Direct

1 meetings --

2 THE COURT: No, no. As I understand it, Mr. Fuchs is
3 going to testify?

4 MR. GLUCK: Let me rephrase the question. Mr. Fuchs
5 is being called.

6 BY MR. GLUCK:

7 Q. Was part of your assessment that Mr. Bodner was an active
8 member of Platinum Management based upon his ability or lack
9 thereof to issue directives or orders?

10 A. Yes.

11 Q. Did you review deposition testimony of Mr. Fuchs indicating
12 that Mr. Bodner directed that no partner distributions will be
13 taken after that dinner meeting?

14 A. Yes, I recall that.

15 Q. Is it typical or atypical for a passive investor, as
16 Mr. Bodner claims to be, to be able to issue a directive of
17 that nature?

18 A. I have never seen a passive investor issue that type of
19 directive.

20 Q. What would be the effect? Assuming that Mr. Bodner
21 directed that the partners at Platinum Management were no
22 longer allowed to withdraw money, what does that mean in
23 layman's terms?

24 A. That means that he was concerned not only about depleting
25 operating funds, but it also meant that he was concerned about

Mbu2Pla5

Post - Direct

1 valuations and whether the management fees were justified based
2 on valuations that he had seen.

3 Q. Did you also review documents indicating that Mr. Bodner
4 had a role in telling Platinum Management personnel what they
5 could do or could not do?

6 A. Yes.

7 Q. Mr. Parson, would you please call up Plaintiffs' Exhibit
8 479, which is sought to be admitted.

9 Mr. Post, is this one of the documents that you relied
10 upon to form your conclusion that Mr. Bodner would direct what
11 a Platinum Management employee could do or not do, in this case
12 evidently providing some sort of Black Elk company?

13 A. Yes.

14 Q. And is it typical for a passive investor to have authority
15 over what other investors could know or not know concerning the
16 investments of a fund?

17 MR. LAUER: Objection.

18 Q. Based on your experience supervising hedge funds for 25
19 years.

20 A. I've never seen a passive --

21 THE COURT: Hold on a minute. There is an objection.
22 That means you don't answer until I rule on the objection.

23 Overruled. You may answer.

24 A. In my experience, reviewing differential authority between
25 a passive investor and an active investor, a part of

Mbu2Pla5

Post - Direct

1 management, I have never seen a passive investor who had the
2 ability or the authority to provide this type of instruction.

3 Q. Thank you. We ask to move 479 into evidence.

4 Mr. Parson, will you please call up Exhibit --
5 Plaintiffs' Exhibit 377. And as you do that, Mr. Post, did you
6 review any documents that describe what actually went on at
7 these partner meetings that were the subject of the calendar
8 invites you testified to?

9 A. No.

10 Q. Mr. Post -- firstly I would like to seek to admit
11 Plaintiffs' Exhibit 377, into evidence which is an e-mail from
12 Mr. Bodner's secretary Angela Albanese to Mark Nordlicht and
13 others.

14 THE COURT: Any objection?

15 MR. LAUER: No.

16 THE COURT: Thank you. Received.

17 (Plaintiffs' Exhibit 377 received in evidence)

18 BY MR. GLUCK:

19 Q. Mr. Post, is it typical for a passive investor to receive
20 information on positions of a fund outside a normal reporting?

21 A. No, that would be, in essence, privileged and confidential
22 information. If it was distributed to one investor, it should
23 have been distributed to all the investors.

24 Q. Have you formed a view on whether Mr. David Bodner was
25 granted access to special knowledge by virtue of his attendance

Mbu2Pla5

Post - Direct

1 at these partner meetings?

2 A. Yes.

3 Q. And what is that view?

4 A. That he was treated not like an investor, but he was
5 treated as part of the management team because he received
6 information that other investors never received.

7 Q. Thank you.

8 I think that we have admitted this.

9 Mr. Parson, will you please call up Plaintiffs'
10 Exhibit 376.

11 Move to admit 376 into evidence.

12 THE COURT: Received.

13 MR. LAUER: We object to 376.

14 THE COURT: Well, you've got to be a little faster on
15 the draw, but what's the nature of your objection?

16 MR. LAUER: It's not sent to Mr. Bodner or from
17 Mr. Bodner.

18 THE COURT: No, no. We have been over that.

19 Overruled.

20 (Plaintiffs' Exhibit 376 received in evidence)

21 BY MR. GLUCK:

22 Q. Same question, Mr. Post. Is it typical for a passive
23 investor to receive preliminary estimates regarding fund
24 performance?

25 A. No, that's very unusual.

Mbu2Pla5

Post - Direct

1 Q. What does that indicate?

2 A. Say that again please.

3 Q. What does the receipt of preliminary estimates on fund
4 performance indicate?

5 A. That's typically internal information, that's before
6 reports are submitted to the regulatory authorities and to the
7 investors. So this is internal confidential information that a
8 passive investor would not be even entitled to receive.

9 Q. Mr. Parson, will you please call up Exhibit 415, please.

10 I will seek to admit Plaintiffs' Exhibit 415.

11 THE COURT: Received.

12 (Plaintiffs' Exhibit 415 received in evidence)

13 BY MR. GLUCK:

14 Q. Mr. Post, was Abby Baez another secretary at Platinum?

15 A. Yes.

16 Q. Is this one of the documents that you relied upon to form
17 your conclusion that Mr. Bodner had access to special
18 knowledge?

19 A. Yes, it is.

20 Q. Is this one of the documents that you relied upon to form
21 your conclusion that he was not a passive investor in Platinum
22 Management?

23 A. Yes, it is.

24 Q. Do you recall testifying earlier regarding the sale of
25 nearly all of Black Elk's assets?

Mbu2Pla5

Post - Direct

1 A. Yes.

2 Q. Do you recall when that occurred?

3 A. Yes, I do.

4 Q. And when was that?

5 A. 2014.

6 Q. In the summer of 2014?

7 A. Yes.

8 Q. Without describing any detail, what surrounds the consent
9 solicitation which surrounded the Renaissance sale, can you
10 describe for me when a consent solicitation in relation to
11 Black Elk occurred?

12 MR. LAUER: Objection.

13 A. I don't have the --

14 THE COURT: No. You have to wait until I rule.

15 THE WITNESS: Sorry.

16 THE COURT: Overruled. You may answer.

17 A. Generally at the time frame of the date of this e-mail,
18 August of 2014.

19 Q. In your experience overseeing hedge funds, would it be
20 typical for a passive investor to be granted meetings,
21 four-hour, uninterrupted meetings, with the chief investment
22 officer like Mark Nordlicht?

23 MR. LAUER: I object.

24 THE COURT: Sustained.

25 Q. Final exhibit. Mr. Parson, would you please call up

Mbu2Pla5

Post - Direct

1 Plaintiffs' Exhibit 590. Mr. Parson if you wouldn't mind going
2 to the Power Point slide, the next page, please.

3 Mr. Post, earlier in your testimony, you opined that
4 the April 2016 NAV statement contained a catastrophic
5 overvaluation. Do you recall that?

6 A. I do.

7 Q. Have you reviewed the PowerPoint which is Exhibit 590?

8 A. I have.

9 Q. Is that one of the documents that led you to conclude that
10 Platinum Management overstated the net asset value of PPVA.

11 A. Yes. This is one of the documents I reviewed and based my
12 opinion on or conclusions.

13 Q. What is your understanding based on your review of the
14 documents of what this presentation was about?

15 A. Well, it's --

16 MR. LAUER: Hearsay.

17 MR. GLUCK: Conspiracy.

18 THE COURT: No. Not yet, anyway.

19 MR. GLUCK: Withdrawn. May I rephrase the question?

20 THE COURT: Yes.

21 BY MR. GLUCK:

22 Q. Does this presentation contain information about the
23 financials of PPVA?

24 A. Yes, it does.

25 (Continued on next page)

MBUCpla6

Post - direct

1 MR. GLUCK: Mr. Parson, will you please go to the next
2 slide.

3 THE COURT: So, what is this document?

4 THE WITNESS: It was a review of the financial
5 condition of the portfolio companies of Platinum.

6 THE COURT: Prepared by who?

7 THE WITNESS: It was prepared by staff, I think given
8 to the CFO.

9 THE COURT: Prepared by persons within Platinum?

10 THE WITNESS: Yes.

11 THE COURT: Are you offering 590?

12 MR. GLUCK: We are.

13 THE COURT: Any objection?

14 MR. LAUER: It was never communicated to our client.

15 He's got a witness --

16 THE COURT: That is not only an objection I've dealt
17 with before, but I think does not fit within my rule that I
18 just propounded earlier today. The objection should be limited
19 to three words. An objection which could have been stated as
20 irrelevant, that's what you're claiming, that's overruled. Or
21 it could have been hearsay, that's also overruled. So the
22 document is received.

23 (Plaintiff's Exhibit 590 received in evidence)

24 However, we are now at 4:30. Ladies and gentlemen,
25 it's really lousy outside and I know you wanted to stay until

MBUCpla6

Post - direct

1 midnight tonight when the rain would clear away, but,
2 unfortunately, I'm just going to have to let you go.

3 Tomorrow, we will start promptly at 9:30. It's very
4 important to meet our timeframe that you all be here. We can't
5 start unless all of you are here. So, my suggestion is you
6 plan to be in the jury room about 9:20 or so and we'll start
7 promptly then. See you tomorrow. Have a good evening.

8 (Continued on next page)

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Post - direct

1 (Jury not present)

2 THE COURT: You may step down. See you tomorrow.

3 So how much longer does plaintiff have on direct?

4 MR. GLUCK: 10 minutes with Mr. Post.

5 THE COURT: And Mr. Lauer, I'll ask you to give me,
6 tomorrow morning, your indication of how long you'll be on
7 cross.

8 I should have mentioned this earlier, but I'm sure it
9 was already known to all counsel. First, any witness, except
10 for Mr. Bodner, is excluded from this courtroom at all times,
11 both before and after he or she testifies.

12 Second, when a witness is on cross, the witness can
13 have no substantive communication with counsel.

14 All right. We'll see you tomorrow.

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1 INDEX OF EXAMINATION
2

3 Examination of:	Page
4 WILLIAM POST	
5 Direct By Mr. Gluck	56

6 PLAINTIFF EXHIBITS
7

Exhibit No.	Received
760	74
761	78
382	89
388	101
459	107
562	109
563	109
564	111
592	112
377	127
376	128
415	129
590	132

22 JOINT EXHIBITS
23

Exhibit No.	Received
72	70